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MACKENZIE VALLEY PIPELINE INQUIRY

Government
Publications

IN THE MATTER OF APPLICATIONS BY EACH OF

- (a) CANADIAN ARCTIC GAS PIPELINE LIMITED FOR A
RIGHT-OF-WAY THAT MIGHT BE GRANTED ACROSS
CROWN LANDS WITHIN THE YUKON TERRITORY AND
THE NORTHWEST TERRITORIES, and
(b) FOOTHILLS PIPE LINES LTD. FOR A RIGHT-OF-WAY
THAT MIGHT BE GRANTED ACROSS CROWN LANDS
WITHIN THE NORTHWEST TERRITORIES

FOR THE PURPOSE OF A PROPOSED MACKENZIE VALLEY PIPELINE

and

IN THE MATTER OF THE SOCIAL, ENVIRONMENTAL AND
ECONOMIC IMPACT REGIONALLY OF THE CONSTRUCTION,
OPERATION AND SUBSEQUENT ABANDONMENT OF THE ABOVE
PROPOSED PIPELINE

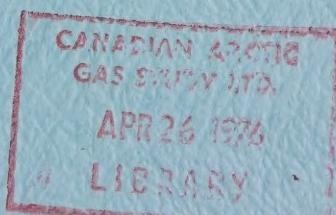
(Before the Honourable Mr. Justice Berger, Commissioner)

Yellowknife, N.W.T.

April 15, 1976

PROCEEDINGS AT INQUIRY

Volume 144



APPEARANCES:

2 Mr. Ian G. Scott, Q.C.,
3 Mr. Stephen T. Goudge,
3 Mr. Alick Ryder and
4 Mr. Ian Roland for Mackenzie Valley Pipeline
Inquiry;

5 Mr. Pierre Genest, Q.C.,
6 Mr. Jack Marshall,
6 Mr. Darryl Carter and
7 Mr. J.T. Steeves for Canadian Arctic Gas Pipeline
Limited.

8 Mr. Reginald Gibbs, Q.C.,
8 Mr. Alan Hollingworth and
9 Mr. John W. Lutes for Foothills Pipe Lines Ltd.;

10 Mr. Russell Anthony,
10 Prof. Alastair Lucas and
11 Mr. Garth Evans for Canadian Arctic Resources
Committee;

12 Mr. Glen W. Bell and
13 Mr. Gerry Sutton for Northwest Territories
Indian Brotherhood, and
14 Metis Association of the
Northwest Territories;

15 Mr. John Bayly and
16 Miss Leslie Lane for Inuit Tapirisat of Canada,
and The Committee for
Original Peoples Entitlement;

17 Mr. Ron Veale and
18 Mr. Allen Lueck for The Council for the Yukon
Indians;

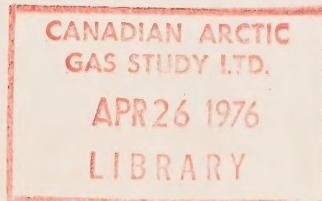
19 Mr. Carson Templeton for Environment Protection
Board;

21 Mr. David H. Searle, Q.C. for Northwest Territories
Chamber of Commerce

22 Mr. Murray Sigler for The Association of Municipalities;

24 Mr. John Ballem, Q.C. for Producer Companies;

347
M835
Vol. 144



1

I N D E X

Page

2

WITNESSES FOR INDIAN BROTHERHOOD:

3

Douglas E. SANDERS

4

- In Chief 21883
- Cross-Examination by Mr. Bayly 21935
- Cross-Examination by Mr. Sigler 21937
- Cross-Examination by Mr. Hollingworth 21943
- Cross- Examination by Mr. Steeves 21947, 21963
- Cross-Examination by Mr. Scott 21948

5

John Shannon SAUL

6

- In Chief 21967

7

Wilf BEAN

8

George BARNABY

9

George KURSZEWSKI

10

Gerry CHEEZIE

11

- In Chief 22000
- Cross-Examination by Mr. Sigler 22072
- Cross-Examination by Mr. Scott 22076

12

EXHIBITS:

13

569 Qualifications & Evidence of D.E.Sanders 21890

14

570

15

571 Qualifications & Evidence of G. Barnaby 22002

16

572 Qualifications & Evidence of G. Kurszewski
and G. Cheezie 22013

17

573 Qualifications & Evidence of W. Bean 22062

18

19

20

21

22

23

24

25

26

27

28

29

30

Yellowknife, N.W.T.

April 15th, 1976

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

4 MR. BELL: I think we're
5 ready to proceed with Mr. Sander's evidence, sir.

6 DOUGLAS E. SANDERS, resumed:

7 DIRECT EXAMINATION BY MR. BELL (CONT INUED):

8 A Thank you Mr. Bell, Mr.
9 Commissioner. It's a pleasure to be here.

10 The purpose of my evidence is
11 to examine the question of the relationship of non-
12 traditional land use projects like the proposed pipeline
13 to aboriginal title claims. To do this, I have re-
14 examined some of the background to such claims in English
15 legal thought and I have briefly discussed in my written
16 paper some of the variant systems that have been used
17 within English colonial^{legal} traditionns as responses to
18 aboriginal title claims.

19 The purpose of this background
20 information and this comparative information is to
21 try to establish what types of property systems or
22 property regimes might come into place in response to
23 aboriginal title claims.

24 Finally, I will comment on the
25 relationship of a major non-traditional land use project
26 such as the pipeline to the claim. Is it possible at
27 this point really, as the part of the question I will
28 raise, to clearly understand what that relationship will
29 be.

30 Initially, I want to state the

D. E. Sanders
In Chief

1 major limitation to my evidence. It's logical for
2 indigenous groups to raise a series of questions in
3 response to the fact of colonial settlement in their
4 lands. To list some, the basic question of political
5 sovereignty, questions of the legal survival of in-
6 digenous customary law, questions of real property
7 rights, questions of human rights, questions of economic
8 rights.

9 My evidence is confined to
10 the colonial legal system.

11 THE COMMISSIONER: Excuse me
12 Mr. Sanders. I didn't notice, Mr. Hollingworth isn't
13 here.

14 MR. SIGLER: He just went out
15 to get some papers that he had forgotten. He'll be right
16 back.

17 THE COMMISSIONER: Oh, and
18 Mr. Bayly isn't here either. We better not have any
19 more night sittings.

20 MR. SCOTT: Mr. Bayly's at a
21 meeting apparently so he's not at home.

22 THE COMMISSIONER: Well, we'll
23 carry on then. Mr. Hollingworth is --

24 MR. STEEVES: I'll cover for
25 Mr. Hollingworth.

26 THE COMMISSIONER: Go ahead.
27 Sorry.

28 A I'm saying my evidence
29 is confined to the colonial legal system. In Canada,
30 that system has denied full or formal legal sovereignty

D. E. Sanders
In Chief

1 to the native tribes to the degree that it has recognized
2 indigenous rights. It has almost exclusively tried to
3 define these rights in property terms. I am not
4 concerned in my evidence with commenting on the rightness
5 or wrongness of that fact. I am not speaking of the
6 views of indigenous groups about colonial assumptions.
7 I am commenting on the ideas and responses of the colon-
8 ial legal system itself and nothing more.

9 It's not my intention Mr.
10 Commissioner to read my paper in full. If it's accept-
11 able to the Commission, I will summarize portions of it
12 and read other portions of it that present the basic
13 argument in it, I think, intact.

14 The first section of the paper
15 deals with English law and the acquisition of new
16 territories. There developed in English legal thought
17 in the 17th and 18th century a framework relating to
18 the acquisition of new territories. It classified
19 colonies or territories or plantations in which England
20 had assumed jurisdiction into three categories. Those
21 acquired by occupation or settlement. Secondly, those
22 acquired by conquest. Thirdly , those acquired by
23 cession.

24 In relation to cession, this
25 is a reference to treaties or agreements of cession which
26 are concerned with sovereignty such as the Treaty of
27 Waitangi in New Zealand in 1840. It was not understood
28 by the term what we know in Canada as the Land Cession
29 Treaties which purport to deal with property rights
30 rather than dealing with sovereignty.. The only treaties

D. E. Sanders
In Chief

1 in Canada which I am aware of which have any explicit
2 content on the question of sovereignty are the early
3 treaties in the Maritime provinces in the 18th century.

4 MR. BELL: Excuse me Mr. Sanders,
5 perhaps for those who are trying to follow in your
6 written testimony, you could indicate where you're
7 summarizing and where you're reading direct from the
8 paper.

9 A I will do that. I'll
10 indicate when I am reading from the paper and at what
11 page.

12 The concept of conquest appears
13 in English legal thought to have required military activity
14 in the area in which the acquisition by conquest was
15 to have taken place. The concept of discovery was used
16 by England to give rights to acquire but appears not to
17 have been considered by England to itself have been a
18 method of acquisition of a new territory.

19 THE COMMISSIONER: Excuse me,
20 did you say discovery?

21 A Discovery. The classic
22 statement in English law on the methods of acquisition
23 of new territories appears to be that of Blackstone in
24 1765 in his Commentaries on the Law of England. This
25 quotation is reprinted in the paper on the first page
26 and I'll read it.

27 "Plantations or colonies in distinct countries are
28 either such where the lands are claimed by right of
29 occupancy only, by finding them desert and uncultiva-
30 ted and peopling them from the mother country; or

D. F. Sanders
In Chief

1 where, when already cultivated, they have been
2 either gained by conquest or ceded to us by
3 treaties and both these rights are founded upon the
4 ^{of} law/nature or at least upon that of nations. But
5 there is a difference between these two species of
6 colonies with respect to the laws by which they
7 are bound.

8 For it hath been held, that if an uninhabited
9 country be discovered and planted by English
10 subjects, all the English laws then in being which
11 are the birthright of every subject, are immediately
12 there in force. But this must be understood with
13 very many and very great restrictions. Such
14 colonists carry with them only so much of the
15 English law as is applicable to their own situation
16 and the conditions of an infant colony.

17 But conquered or ceded countries that have
18 already laws of their own, the King may indeed alter
19 and change those laws, but till he does actually
20 change them, the ancient laws of the country
21 remain unless such are against the law of God as in
22 the case of an infidel country."

23 The distinction between "infidel
24 countries" or "pagan countries" and Christian countries
25 which is mentioned here is one which is terminated in
26 English legal thought well before the judgement in
27 Campbell and Hall in 1774 and is commented on to that
28 effect in that judgement.

29 As the quotation from Blackstone
30 indicates, and I'm now moving on really to page three of

D. E. Sanders
In Chief

the paper, there are three basic methods of acquisition of territories. Occupation and settlement as a method of acquisition of territory assume that the territory was unpopulated. English settlers, acquiring and settling in the area took English law with them and it applied fully there because there was no other legal system which could apply. In English thought, there was some other consequences and in a colony acquired by occupation and settlement, English Parliament -- the Imperial Parliament had legislative jurisdiction.

In contrasting situations of conquest or cession, since these were prerogative acts, these involved prerogative acts of the English Sovereign. There was an initial prerogative legislative power in the English crown to legislate directly for these new territories without going through the Imperial Parliament.

In the situations of conquest and cession, the change of sovereignty was clearly held not to alter existing^{law} or existing property rights. They could be altered by the new sovereign but the change of sovereignty itself did not have that effect.

If North America was to be treated -- here I'm beginning in the middle of page four -- If North America was to be treated as acquired by occupation or settlement, there had to be some explanation about the existence of native tribes on this continent. If it was acquired by conquest or cession, then legally, the pre-existing legal order would continue and would continue to be recognized by the new sovereign unless changed. If the existing legal order continued then

D.E. Sanders
In Chief

1 obviously Indian property rights, in conformity with it,
2 would continue through the period of change of sovereignty
3 and be recognized by the new legal order until explicitly
4 changed.

5 English law however defined
6 North America as having been acquired in relation to
7 the native population by occupation and settlement and
8 this presumed that the lands were uninhabited. I'd like
9 to quote the upper part of page 5. I've quoted a couple
10 of statements from English legal texts, the first in
11 1780, the second, Sir George Cornwall Lewis's book in 1841:

12 "When the dependency is a colony of the dominant
13 country which settled in an uninhabited district,
14 or which has reduced the native population to a
15 condition of slavery, or has completely absorbed them
16 ^{with} into its own body as was the case with the Greek
17 colonies on the coast of the Mediterranean, --"
18 and this is the significant portion,

19 "or which has expelled or exterminated the aborigi-
20 nal inhabitants as has been done by the Spanish and
21 English colonies in America and Australia, there
22 is a general agreement between the laws of the
23 mother country and the dependency, and the mother
24 country has no inducement to disturb the laws of
25 the dependency."

26 Either Mr. Lewis was completely
27 ignorant of the situation in North America or he was
28 asserting a legal fiction that the aboriginal population,
29 in law, ceased to exist. This denial of the very
30 existence of indigenous populations took legislative

D. E. Sanders
In Chief

1 form in 1858 by the Imperial Act which created for the
2 first time colonial government on the mainland of
3 British Columbia. The preamble of that statute reads,
4 and this is quoted on page five of my paper:

5 "Whereas diverse of her Majesty's subjects and
6 others, have by the license and consent of Her
7 Majesty resorted to and settled on certain wild
8 and unoccupied territories on the northwest coast
9 of North America, commonly known by the designation
10 of New Caledonia and from and after the passing of
11 this act to be named British Columbia."

12 (QUALIFICATIONS AND EVIDENCE OF DOUGLAS E. SANDERS
13 MARKED EXHIBIT # 569)

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D.E. Sanders
In Chief

1 This is very odd in some ways.

2 THE COMMISSIONER: It is no
3 longer unoccupied. Don't let me interrupt you, Mr.
4 Sanders.

5 A It literally means that
6 you acted for certain non-existent clients at an
7 earlier point in your career, Mr. Commissioner.

8 This could not be taken in
9 any sense to have been a statement of fact. The
10 legislation in 1870 -- in 1858 repealed as far as
11 British Columbia was concerned Imperial legislation of
12 1802 and 1821 which it included that area within what
13 is termed "the Indian territories". The colony of
14 Vancouver 's Island had been established since 1849,
15 so there was clearly an English presence and English
16 knowledge of the area. This reasoning has also occurred
17 in relation to Australia, and on page 6 of my paper I
18 refer to the case, Cooper v Stuart, decided in 1889
19 by the Judicial Committee of the Privy Council. This
20 is a reception of law case from New South Wales and
21 in it -- and I'll just quote the second quotation in
22 the middle of the page, Lord Watson stated:

23 "that the colony consisted of attractive
24 territory practically unoccupied without
25 settled inhabitants or settled laws."

26 Now that case did not directly deal with aboriginal
27 rights.

28 In 1971 in the Miliirrpum
29 case which was an aboriginal rights case from the
Northern Territory of Australia, the Supreme Court of

D.E. Sanders
In Chief

1 the Northern Territory ruled that it was bound by the
2 1889 decision of the Judicial Committee of the
3 Privy Council of Australia'was a settled colony. Mr.
4 Justice Blackburn was careful to point out that this
5 was a legal classification.

6 If you go to the portion of
7 the quotation on the top of page 7, perhaps I'll just
8 summarize the earlier part, the counsel for the abori-
9 ginals said that the statement in^{the} 1889 case that it
10 was not -- that there were no settled inhabitants and
11 no settled law were in fact inaccurate and that the
12 evidence in the case itself had shown very complex and
13 detailed patterns of occupations and settlement, and of
14 law. Mr. Justice Blackburn dismissed that argument and
15 he says in the middle of the quotation, as it appears
16 on the top of page 7:

17 "The question is not one of fact but one of
18 law."

19 The logic of English colonial
20 thought led necessarily to the alternative conclusion
21 that the aboriginal occupations of Australia and North
22 America either did not exist in law or that their
23 ownership of the land survived the change of sovereignty
24 which established England as the political master of
25 the area. To avoid the strict logic of these alterna-
26 tives certain modifications of theory occurred. On
27 the middle of page 7 I begin to examine three of
28 these modifications.

29 The first is the suggestion that
30 a country is uninhabited if there is no settled political

D.E. Sanders
In Chief

1 order if there's no local law. Sir Henry Jenkyns,
2 writing in 1902 stated:

3 "The colonies differ according as they have
4 been acquired by settlement or by conquest or
5 cession, and the Courts of law have sometimes
6 been called upon to decide whether a colony
7 was a settled or a conquered colony. The
8 distinction appears to depend at the time of
9 the acquisition of the territory upon whether
10 at the time of the acquisition of the territory
11 there existed on that territory a civilized
12 society, ^{with} civil institutions or laws, whether
13 in fact there existed anything which could be
14 called a lex loci."

15 I then quote a couple of the statements from the
16 Judicial Committee's decision In Re Southern Rhodesia,
17 which says in the quotation at the top of page 8:

18 "There are indigenous peoples whose legal
19 conceptions, though differently developed, are
20 hardly less precise than our own. When once
21 they have been studied and understood they are
22 no less enforceable than rights arising under
23 English law."

24 The obvious, to drop down to
25 the bottom of this page 8, the obvious danger with this
26 approach is that native rights are dependent upon the
27 culture bound perceptions of Europeans. Colonial
28 settlers, anxious to acquire land, are not likely to
29 be interested in learning the indigenous system of
30 land laws, to recognize that such a legal system exists

D.E. Sanders
In Chief

1 in itself is to admit a possible constraint on settler
2 acquisition of land. I suggest that it is unacceptable
3 today to dismiss the Indian and Inuit peoples of the
4 Northwest Territories as "uncivilized" or as -- and to
5 quote from the Judicial Committee of the Privy Council
6 in *In Re Southern Rhodesia*:

7 "So low in the scale of social organization
8 that their usages and conceptions are not to
9 be reconciled with the institutions of the
10 legal ideas of civilized society."

11 I suggest that the testimony
12 of Dr. June Helm and Professor Beryl Gillespie before
13 Mr. Justice Morrow in the Paulette case would seem to
14 be conclusive on the basic point that there was a
15 comprehensible system of land ownership among the native
16 people of the Northwest Territories, a system which
17 has not been abandoned during the post-contact period.
18 I understand that there will be evidence called at the
19 land use study which is being prepared, which I assume
20 would relate rather well to the anthropological evidence
21 of these two expert witnesses.

22 The second revision of
23 English colonial thought on the acquisition of new
24 territories was to classify lands as owned only if they
25 were permanently used as living sites or areas of
26 cultivation. All other lands were deemed to be waste and
27 deemed to automatically become unencumbered Crown lands
28 on the assumption of sovereignty by England. There
29 are a number of references to this in the Blackstone
30 quotation which I began with. He does refer to lands as

D.E. Sanders
In Chief

1 being both "desert and uncultivated" as if the two
2 necessarily go together. He does not in his statement
3 include a category for hunting tribes.

4 At the bottom of the page,
5 the answer to this argument in Canada seems quite clear.
6 Our modern law of native rights is largely built on the
7 Royal Proclamation of 1763 and that document recognized
8 Indian rights to hunting territories explicitly, and
9 I quote from the document to that effect; and the
10 treaties which followed the Royal Proclamation clearly
11 recognized hunting territory. The pattern of a recogni-
12 tion limited to intensively used areas in the years
13 after 1763^{was} only followed in British Columbia where
14 Indian policy had different origin than in the treaty
15 areas of Canada.

16 The third revision of English
17 colonial thought was one which really alters the concepts
18 which have been used up until that point. Essentially
19 I suggest it involves a misuse of the term "discovery",
20 ^{concent of} a reinterpretation of the conquest, and a distortion of
21 the impact of conquest on the existing legal order.
22 In Johnson v McIntosh, Chief Justice Marshall of the
23 United States Supreme Court invoked "conquest" to settle
24 the questions of the acquisition of North America and
25 the ability of the legal system of the United States to
26 now determine the existence and extent of Indian rights.
27 His key reasoning, and I quote at the bottom of page
28 10, says:

"However extravagant the pretension of converting
the discovery of an inhabited country into

D.E. Sanders
In Chief

conquest may appear, if the principle has been asserted in the first instance and afterwards sustained, if the country has been acquired and held under it, if the property of the great mass of the community originates in it, it becomes the law of the land and cannot be questioned."

Dropping down to the middle of the page, Chancellor Kent in his commen_taries largely rephrases Marshall in saying that:

"The practice of treating with Indians for their land was founded on the pretension of converting the discovery of the country into a conquest."

It appears that there is -- that the conquest reinterpretation, as I've called it in this section of the paper, is largely something that developed in the United States. Earlier in our history in Canada it was something of a matter of national pride that in relation to the Indians this country had not been acquired by conquest. Now this was often asserted in a rather parochial way to assert that the traditions here on Indian policy had been much better than the practice in the United States. I think that prevented really an acceptance of a conquest reinterpretation of the acquisition of Canada in this country. It's rather interesting that Chief Justice Laskin in a quotation at the top of page 12 refers to the "half truth of colonies by settlements," acknowledging the ambiguity in the Canadian tradition.

D.E. Sanders
In Chief

Even if Canada were now to be held to have been acquired by conquest, we would still have to search back to find actions of the new sovereign after conquest terminating Indian rights. The reinterpretation only seems to bring us to the major issue discussed by the Supreme Court of Canada in the Calder case, that is what actions of the sovereign constitute a termination of Indian rights?

On page 13 I note one other matter in relation to survival of legal rights from the pre-contact of the period before which England acquired sovereignty. It should be noted that there have been native law questions in Canada other than those relating to what we normally include within the terms, "aboriginal title" or "aboriginal rights".

They have related primarily to customary marriages and customary adoptions. The adoption cases are basically exclusively in this jurisdiction of the Northwest Territories. Customary adoptions have been upheld by the Court of Appeal of the Northwest Territories on the basis that custom is a traditional source of law in common law tradition. This resolution of the issue involved no departure from English common law concepts. Most of the decisions in relation to customary marriages have also been argued within the framework of English law. One exception, the marriage case of Connolly v Woolrich, though somewhat ambiguous on the point, appears to have recognized a customary lex loci in the Northwestern Territory prior to the introduction of English law

D.E. Sanders
In Chief

1 into the area, the particular area was part of the
2 Mackenzie drainage, part of what is now the Province
3 of Alberta.

4 My conclusion on this section
5 is at the bottom of page 13.

6 English legal thought on the
7 acquisition of new territory appears at first promising
8 as a framework within which native rights in North
9 America can be understood, and there is a recent paper
10 that I've mentioned by Professor Brian Slattery which
11 cited in the summary of my evidence which argues ex-
12 clusively from the English rules on the acquisition of
13 territories.

14 In my impression, the promise,
15 however, fails, and we are led into fruitless paths
16 such as the preposterous distinction between law and
17 fact which led the Supreme Court of the Northern
18 Territory in Australia in 1971 to declare that Australia
19 had been unoccupied. Alternatively, it leads us to
20 recasting the history of the acquisition of Canada into
21 one of conquest, an analysis which we have traditionally
22 rejected.

23 In the second portion of this
24 paper I suggest an alternative approach to the question
25 of native rights, which I suggest is more in harmony
26 with what in fact ^{has} happened in this jurisdiction histori-
27 cally. I suggest in the first couple of pages of this
28 section, pages 14 and 15, that English colonial thought
29 in relation to North America did not begin with any
30 concept of native policy. One of the reasons for this

D.E. Sanders
In Chief

which I certainly had overlooked until recently, was the fact that in the English colonial enterprise the system was very extensively decentralized. The interests of England were primarily colonial, were primarily commercial, and it was only in relation to trade that England early asserted **very** strong centralized authority over the colonies and plantations. Native policy was in fact left basically and exclusively to the local colonial authority in the particular area.

This altered and it altered in response to experience and it altered in the years leading up to the Royal Proclamation of 1763. Now on the bottom of page 15 I note the major events in that particular period.

English policy on Indian questions in North America was centralized by the Imperial Government in the years leading up to the Royal Proclamation of 1763. The major events were the Albany Congress of 1754, the centralization of Indian affairs and the military in 1755, the creation of the two Indian superintendencies in 1756, the instructions to the colonial governors in 1761, the Belcher Proclamation applied in the Maritimes in 1762, and the Royal Proclamation of 1763.

The centralization meant for the first time, a uniform English approach to Indian questions in North America. Because it was designed to placate Indian unrest prompted by expanding European settlement, the policy recognized aboriginal land rights. The development of the policy arose as a practical response

D.E. Sanders
In Chief

to particular situations. It was not an extension of pre-existing theory, though there had been some earlier recognition of Indian land rights in New England.

I suggest that it was in the manner of the early common law; there were particular patterns of practice which were established in response to the realities of the situation. The practice became supplemented by formal political and legal decisions, and judicial decisions further supplemented the general legal framework. I then cite -- quote from the judgment of Mr. Justice Strong in the Supreme Court of Canada in the St. Catherine's case. It is essentially the same kind of argument.

I turn now to page 17 at the end of those quotations. The earliest formal recognition of Indian rights in what is now Canada occurred in the context of conflicts between the colonial powers. Provisions protecting Indian allies occurred in both the Treaty of Utrecht in 1713 and the Articles of Capitulation of Montreal in 1760. The latter provided that the Indian allies of France would be, "maintained in the lands they occupy if they wish to remain there."

It was the Royal Proclamation which marked the watershed. Alpheus Snow takes the peace of 1763 as "the beginnings of the modern law on the subject" of the legal rights of aborigines. I suggest that in Canada the date marks a major division between the perception of Indians as allies and the acknowledgment of Indians as landowners.

I suggest in the next few

D.E. Sanders
In Chief

1 paragraphs that the real roots are the Marshall
2 decisions in the United States in the early part of
3 the 19th century, and equally the St. Catherine's case
4 in relation to Canada was not an English theory on
5 the acquisition of new territory; it was rooted really
6 in the practice which developed in North America.

7 Chief Justice Marshall spends
8 a fair amount of time, particularly in the judgment
9 of Worcester v Georgia examining the earlier grants
10 to the colonies in New England and the practice that
11 developed in that area. I suggest at the bottom of
12 page 18, the final resolution of the St. Catherine's
13 case by the Judicial Committee of the Privy Council
14 made it clear that in Canada the law of native rights would
15 be based on colonial experience in this area. That has
16 continued to be true in the decision since the St.
17 Catherine's case, the Calder decision while inconclusive
18 on the survival of Indian title in British Columbia,
19 clearly served to counter any tendency to rigidly and
20 exclusively focus simply on the Royal Proclamation as
21 the source of aboriginal title claims in Canada, and in
22 the Paulette case, the historical and legal experience
23 in the Mackenzie District was found in the Indian
24 provisions of the doctrines transferring Rupert's Land in
25 the Northwestern Territory in Canada, and the James Bay
26 litigation in Quebec, the ^{Quebec} Boundaries Extension Act of
27 1912 served a similar function. So these various cases
28 in different parts of the country are all rooted back
29 into legal documents of the colonial history of the
30 particular area.

D.E. Sanders
In Chief

My conclusion is stated on page 21. Judicial recognition of aboriginal rights has occurred in those jurisdictions where there has been a some history of recognition of aboriginal rights in practice. The major decisions in the United States, Canada, New Zealand and Africa, while not deriving simply from acts of recognition, derive from historical context in which there was some recognition. Judicial decisions represent a codification and extension of practice. Because the process involved is similar to that of early common law, it seems appropriate to speak of a common law of native rights based on colonial practice.

The next section of my paper, which begins on page 22, addresses itself to different legal regimes or property regimes which have in fact come into being in different areas which have been subject to English colonial jurisdiction. I suggest that there are two basically distinguishable systems as responses to aboriginal title claims. The first involves land cession treaties or other large-scale terminations of native interests, and as part of the land cession treaties creation of reserves or native allotments or some other form of smaller scale land ownership or land use rights to the indigenous population.

We are familiar with this because basic form we see it in North America as the norm.

The second, and this is my term, I refer to as a system of recognition and conversion of native title. I suggest we are unfamiliar with this largely because it's occurred elsewhere than North

D.E. Sanders
In Chief

America. The system in New Zealand, largely the system in Oceana and parts of Africa.

The first sub-section on page 22 deals with land cession treaties, and there is perhaps one point that I would like to mention in relation to that. It appears to me that the history of treaties in Canada from the Royal Proclamation down to the present undergoes a considerable evolution. There were in the years immediately following the Proclamation a series of treaties and surrenders in what is now Southern Ontario. There are a great number of these documents, and most of them deal with relative terms of looking at the whole history, in terms of relatively small areas of land and relatively small populations of Indians. The pattern there is roughly similar to the pattern of the early treaties on Southern Vancouver Island negotiated by Governor Douglas as chief factor of the Hudson's Bay Company. Again it is relatively small areas, relatively small populations of Indians.

The scale of the treaties expands very significantly with the two Robinson Treaties of 1850 which deal with the watershed of Northern Lake Superior and Lake Huron in Ontario, north to the watershed of the Hudson's Bay; and then the first two of the Federal Treaties, Treaties 1 and 2 negotiated in Southern Manitoba in 1871, they are considerably larger than the previous treaties which were negotiated in Southern Ontario, but the geographical scale of the first three treaties of the Federal Government, 1, 2 and 3, was immediately dwarfed by the next series, series

D.E. Sanders
In Chief

Treaties 5 to 7 between 1875 and 1877. There is then a 22-year gap between the final of those treaties and Treaty 8 in 1899 and it seems significant that three of the final treaties, 8, 9 and 11, are clearly by far the largest in Canada and I think vastly larger than any of the treaties negotiated in the United States. Clearly the treaty process changed/dramatically from that followed in Southern Ontario and Southern Vancouver Island. I suggest that the reason for this quite dramatic alteration was probably the increased confidence in centralized legal and governmental structure created in Canada by the colonial process, and the increasingly weaker political position of the tribes as colonialism moved further west and further north.

The Prairie Treaties, particularly in the more westerly areas of the fertile belt, were negotiated in periods of near desperation for the Indian tribes, with the traditional economic order obviously disintegrating from forces beyond Indian control. I suggest that the Indian leadership had little choice but to accept the offers of the government commissioners to treat the Indians as "children" subject to the benevolence of the "great white mother".

D. E. Sanders
In Chief

I suggest that the Indian treaties of the fertile belt can only be understood in the context of the crisis which the prairie tribes were experiencing in the period. Their political bargaining power had largely been destroyed. In the negotiations, they asked among other things for relief in times of famine for that was what was facing them.

I'm reading now on page 24. It is a commentary on the character of government in both the United States and Canada that many of the agreements with native groups have been negotiated in an atmosphere of crisis or significant political pressure.

The Alaska settlement, I suggest cannot be seen outside of the political context of major resource development. The settlement bears many of the marks of a forced compromise. The basic question of land selection was left to be worked out after the legislative settlement was in place.

It's my impression that if the natives of Alaska have felt betrayed on any single element of the settlement, it is on the question of land selection and the basic question of entitlement although the formula had been worked out, implementing that formula, that had been left to be worked out after the legislative scheme was in place, and as the Commissioner is probably quite aware, there have been protracted problems particularly with the 13th corporation for nonresident Alaska natives.

I saw something on that very recently. They think that that question is still not

D. E. Sanders
In Chief

settled. I suggest that the James Bay agreement also shows the marks of a settlement negotiated under pressure. Mr. John Ciacca the chief negotiator for the province of Quebec stated publicly that if the communities, the native, Inuit and Indian refused to approve the agreement in the referendum, the project would go ahead anyway and the native people would have lost the benefits of the agreement. It was a direct parallel to statements of government commissioners in the treaty period stating that even if the Indians did not sign the treaty, whites would enter the area in any case.

It is suggested that in spite of certain clear differences, the Alaska and James Bay settlements are in the basic tradition of the Indian land cession treaties. They are not examples of systems of recognition and conversion of native title.

I'll now go on to talk about systems of recognition and conversion of native title. These involve a recognition of native land holding rights as established by native customary law. Our traditions are very much recognition only in the context of extinguishment; formal recognition at the point of treaty, the treaty both recognizing and terminating the rights. The system of recognition and conversion involves ^{out}recognition with immediate surrender without necessarily an immediate conversion, but the process of creating non-native interests in native land does require a formal conversion of the native title into what would be a transferable European style title and some institution is necessary to ascertain and record in a formal way the

D. E. Sanders
In Chief

1 native owners to particular lands and then to convert
2 that, the native customary ownership into a European
3 style title. The institution which does this administrative
4 work typically will also examine the proposed
5 transaction which will created the non-native property
6 interest to determine whether the deal is fair and
7 reasonable.

8 Since the process of determining
9 native owners of particular lands involves an understand-
10 ing of customary law, the institution created to handle
11 the process must include native people or at least have
12 native assessors attached to the institution in some
13 manner.

14 In the paper, I then go on to
15 give some background in relation to the system in New
16 Zealand. Choosing New Zealand largely because it has
17 been cited quite a number of times in Canada as a model
18 that perhaps Canada should follow as a jurisdiction
19 within the English colonial tradition in which things
20 seem to have gone rather better than here.

21 In New Zealand, there is a
22 Maori Land Court which was established in 1865 which is
23 the basic institution for recognition and conversion
24 of native title there. There have been critiques of
25 the work of the Native Land Court and certainly the
26 history in New Zealand is not ideal because it is land
27 disputes which leads to a decade of warfare in New
28 Zealand in the 1860's, and it's really in that period
29 that the government is forced to some degree to try to
formalize the institution of the Maori Land Court.

D. E. Sanders
In Chief

1 In fact, the institution is created during that decade
2 and it's during that decade also that the four Maori
3 seats in Parliament are created. So, those are responses
4 not to an initially successful native policy in New
5 Zealand, but to a native policy which in disastrous
6 disarray during the period in which those institutions
7 are created.

8 It has been common assumption
9 that New Zealand has had a particularly ideal and
10 placid settlement, but it's now known in the last two
11 or three years that there have been a number of Maori
12 demonstrations in New Zealand around land issues and
13 around other political rights issues in the country.
14 So it's not as ideal as we had been led to believe.

15 I'd like to try to -- I also
16 make references to the system of recognition and
17 conversion fractions in New Guinea and in Fiji. Per-
18 haps it would be easiest in trying to explain how such
19 a system would work to, on a theoretical basis attempt
20 to explain how it could work in the Northwest Territories.

21 You would necessarily begin
22 by an examination of customary land ownership. The
23 only source that I would be familiar with at this point
24 on that is again the evidence of Dr. June Helm and
25 Professor Beryl Gillespie in the Paulette case in which,
26 particularly Dr. June Helm testified that the land
27 holding unit among the Dene people traditionally was
28 what she termed "a regional band". Her evidence indica-
29 ted that the territories of the regional bands in the
30 Northwest Territories could be mapped accurately and quite

D. E. Sanders
In Chief

1 adequately. I would assume that the land use study
2 which has been underway by the Brotherhood would give
3 quite useful information as far as instituting any kind
4 of system of this kind.

5 Let us assume and I'm just
6 taking it as a random figure that there are 20 regional
7 bands among the Indian people of the Mackenzie District.
8 The initial question would be mapping those territories.
9 If there was to be a right-of-way for a pipeline down
10 the valley, it would then be a question of saying, "Who
11 are the landowners?" Perhaps it would be ten of the
12 20 regional bands which are the landowners under custom-
13 ary law, of parts of the pipeline right-of-way which
14 is desired.

15 I'll assume a process of
16 negotiation. The negotiations could occur between
17 these ten land-holding units and the corporations which
18 wish to acquire the right-of-way. If there was
19 agreement, then it would be necessary at that point
20 for that portion of the land holdings of these regional
21 bands to be recognized in a formal sense, in our style
22 "formal sense", by a recording of the owners and a
23 recording of the specific land. An agreement would
24 then have to -- if there's an institution which also
25 approves the agreement then the agreement would have
26 to be approved in that way.

27 A European style title would
28 be created simply for the right-of-way. That could
29 then be transferred to the new landowners by sale or
30 lease or in whatever particular manner. The balance of

D. E. Sanders
In Chief

1 land holding of the regional bands would continue, and
2 if ten years from now another pipeline is to come in
3 or new mineral deposits were discovered or some other
4 kinds of major, non-traditional land use were going to
5 occur, at that point again, this same process is dealt
6 with.

7 It seems to me that in looking
8 back on the prairie treaties and the sort of development
9 of the economy in southern Canada, that surely it's
10 fairly obvious that the most disasterous thing for the
11 native groups to have done was to have terminated
12 completely their ownership at the beginning of that
13 whole process. That, more effectively than any other
14 single thing, dealt native people out of the new
15 economic order which developed in southern Canada.

16 If some kind of system of
17 recognition and conversion had occurred, native land
18 holding rights would have continued through the period
19 of European settlement and the appreciation of land
20 values which occurred because of that settlement, the
21 creation of the cash economy which occurred as a result
22 of that settlement would have meant that native groups
23 had a continuing real economic role in what we often
24 refer to as the opening of the west. An economic role
25 comparable perhaps to that that they had during the fur
26 trade. But instead, there was a complete change of
27 economic relationship from the fur trade period to the
28 period of settlement and the treaties; one which effective-
29 ly dealt native people out of the economy; that did not
30 happen in the same sweeping way in jurisdictions like

D. E. Sanders
In Chief

1 New Zealand and certainly did not happen in jurisdictions
2 like Fiji, where, although the native Fijians are now
3 not a majority of the population in Fiji, their land
4 holding is very extensive and any major projects such
5 as a major hotel resort project going in in that
6 jurisdiction at that point, will go in on lease. That
7 specific non-native land use will be the subject of
8 negotiations at this point when that project goes in.
9 If, ten years from now a similar project comes in,
10 again that will be negotiated at that point.

11 The native groups there have
12 not been dealt out of the evolution of the economic
13 order in that jurisdiction.

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D. E. Sanders
In Chief

I will turn now to page
31 of the paper. I did make reference to the business
of allotments and I just want to note two other points
in relation to property --

THE COMMISSIONER: Excuse me.
Excuse me Mr. Sanders. Just before you go on, let's
just pause a moment because you tried to tell us how,
in a practical way the recognition of Indian title could
be reconciled with development assuming that were thought
appropriate. You said that if they're -- the part that
I didn't quite follow you, was where you converted the
acknowledged title of the Dene regional bands into a
European, Euro-Canadian Anglo-Saxon right-of-way.

How did that occur? By
negotiation merely, or simply?

A There'd be two aspects
to it. The conversion -- the formalization of the title
in Euro-Canadian -- into a Euro-Canadian style title
handled
would be formally by a particular kind of institution.
I've used that as a very neutral term.. It would be,
in New Zealand, the Maori Land Court which is structured
very much like a court. In New Guinea, it's called the
Land Titles Commission and in Fiji, it's the Native
Lands Trust Board. So that New Guinea and, the Fiji
one is very clearly an administrative board. The New
Guinea one is a bit between, it's rather more formal
than most administrative boards and holds very formal --
some very formal hearings.

So, the question of creating
the transferable title would be a matter for that

D. E. Sanders
In Chief

institution.

Q Well, when that institution looks at it in Fiji, New Guinea and New Zealand, does it examine the question whether it is in the large -- the largest sense in the best interests of the natives to surrender their interest, whatever it may be, or does it simply look at the legalities of the situation?

A Typically, it does both in the examples that I am familiar with. There's certainly in New Zealand a veto power on the part of the Maori Land Court to any deal, and there is not clearly defined in the legal system there the exact -- an exact set of criteria which, if you meet them, then automatically the transaction can occur. There's this kind of discretionary power in the court.

So, initially on the question really of the recognition, the formalization of the native ownership so that you can create a European style title. In that, the court is to reflect simply customary law and you will have native assessors or perhaps the institution itself for those purposes can be a native institution.

So, you get out of that part of the process the transferable title. Then you have the agreement to transfer or lease the title to non-native use. That agreement, in New Zealand would be subject to the approval of the Maori Land Court before it could come -- before it could be legally effective. There is therefore, still this sort of formal constraint which goes back in New Zealand to the Treaty of Waitangi

D. E. Sanders
In Chief

1 and which crown monopoly on pre-emption was established
2 much like the crown monopoly on acquisition of Indian
3 lands which is formalized in our traditions in the
4 Royal Proclamation.

5 Q Yes, and what you say
6 ties in with what Mr. Manuel said yesterday. I simply
7 want to make sure I appreciate the connection. The
8 pattern in New Zealand was not for the native people to
9 surrender their interest but rather to retain it and to
10 surrender it as seemed appropriate that with the
11 passage of years to enable development to occur. Is that
12 essentially what you're saying?

13 A Yes, that's the theory.
14 I say that explicitly because in fact in New Zealand
15 historically, there was very considerable pressure on
16 the Maoris to sell land and this really strained very
17 much this institutional relationship which was attempted
18 to be established. It made it very difficult in some
19 ways for it to function well. But certainly what you've
20 stated is the theory and it did result very clearly
21 in a much more significant Maori retention of land in
22 the economy. There were some problems because as has
23 been acknowledged in the recent study, by war it in
24 fact the administrative system that was set up from the
25 Maori land was one -- was a very poor one in comparison
26 to the one that New Zealand law provided for European
27 title which resulted in some title problems for Maori
28 land.

29 But that's something that does
30 not inherently have to occur and we have some of those

D. E. Sanders
In Chief

1 problems in relation to Indian reserve lands in this
2 country.

3 But those are problems which
4 are administrative problems as far as I can see and
5 don't necessarily follow from a system of this kind.
6 One of the things that struck me about these systems and
7 I really didn't know anything about them until I
8 spent some time in New Zealand and the South Pacific
9 is how well established they are as parts of the legal
10 system in those areas. These are not strange and exotic
11 things. These are a continuing part of the legal
12 system. It's a part of lawyers' practise. You get
13 some specialists and I refer in my paper, there's
14 one of the Judges of the Maori Land Court in New Zealand
15 in 1960 published what's very much a practitioner's
16 guide to dealing with the Maori Land Court and describing
17 the process that's involved. These are stable and
18 continuing parts of ^{the} legal system in those areas.

19 Q Just then Mr. Manuel
20 pointed out yesterday that the Dene take the position
21 that a land settlement should acknowledge their title--
22 their Indian title to the Mackenzie Valley. The
23 Government of Canada takes the view that a settlement
24 should essentially be a settlement in which they would
25 surrender their Indian title to the Mackenzie Valley.
26 You're saying that in the Anglo-Saxon -- in our legal
27 tradition -- the tradition of the dominant society,
28 that way of approaching the problem is -- falls within
29 our own legal tradition, and you say that in New Zealand
30 they have proceeded in this fashion and retain the

D. E. Sanders
In Chief

1 one of the essential characteristics of the tradition
2 we have always pursued in Canada. That is, that the
3 Crown always has a veto over the transfer of Indian
4 lands to non-Indians.

5 A Yes.

6 Q That of course is built
7 into our Constitution for the purpose of safe-guarding
8 the interests of the Indians. Forgive me, I just want
9 to do that as I go along so that when I'm rereading
10 this, I can look for my own summary and use that as a
11 beginning to-- Well, I've got it right, have I?

12 A Yes.

13 Q All right.

14 A On page 31 and 32, I have
15 two brief sections. The first at the bottom of 31
16 dealing with allotments.

17 A resolution of aboriginal
18 title claims has, in certain areas involved allotments
19 of land to individual native people or to native families.
20 The two major examples appear to be allotments of
21 reservation land in the United States under the Dawes
22 Allotment Act in 1887 and the Half-Breed Land Grants
23 in Canada under the Manitoba Act and the Dominion Lands
24 Act.

25 Then a final paragraph on other
26 land-holding systems. Resolution of aboriginal title
27 claims may involve the establishment of reserves or
28 the establishment of other systems for group land holding.
29 As is now well known, the Alaska Native Claims Settlement
30 Act granted land and money to a series of regional and

D. E. Sanders
In Chief

1 local corporations; corporations established under
2 normal state law.

3 In New Zealand and the United
4 States, fractionalized interest in particular native
5 lands, have been assembled into workable units by
6 converting the fractional owners into shareholders in
7 a land holding corporation. That's simply another
8 variant thing that has occurred.

9 There are other examples of
10 corporations or trusts being established for native
11 groups. Legislation in Australia over the last few
12 years has vested title to reserve lands in trust vehicles
13 to give community control to the reserve system. A
14 recent settlement of the Metis claim in Alberta also
15 involved a trust drawn up on a contractual or private
16 basis with no enabling legislation.

17 My conclusion of this section.
18 Resolution of aboriginal title claims in English law
19 can result in:

- 20 a. A system of recognition and conversion of native
21 title.
- 22 b. A system of surrenders and reserves
23 of land
- 23 c. Allotment to individuals or families
- 24 d. Group land holding by a corporation trust or
25 other body
- 26 e. Certain rights to use lands such as hunting,
27 fishing, trapping and gathering rights

28 I conclude that there is no
29 reason in principle to exclude the possible application
30 of any of these variant systems to the situation in the

D. E. Sanders
In Chief

1 Northwest Territories.

The fourth section of my paper, the final section, begins on page 34. Since in the second section I have concluded that the roots of aboriginal title as a doctrine in our law are really in a common law rooted in practise, it seemed necessary in developing this argument to spend some time just repeating some material in effect which relates to the practise and the evolution of colonial institutions in the country.

D.E. Sanders
In Chief

I don't intend to read this in detail. The first three pages get into a question which has interested me for a while, as to why in 1867 a decision was made in favor of federal jurisdiction over Indians and lands reserved for the Indians. Oddly in the Confederation debates it appears that there is no reference why that decision is made. It appears to have been seen as non-controversial in the period in which it was made. It appears to me that there are two different strains of attitude towards Indians in a sense in a political way, the one is to see them as problems which have to be dealt with or changed or gotten out of the way; and the other is to see them as victims of the process in need of some special protection. As far as I can ascertain, the decision in 1867 was made on the analysis that the Indians were being victimized and that there was a need for protection, rather than on the notion that federal jurisdiction was necessary to remove them as obstacles to the process.

I've quoted on page 35 from the Report of the Select Committee on Aborigines of the British House of Commons in 1837. You do get in this period the creation of the Aborigines Protection Society, you have the termination of slavery throughout the Empire, you have the kind of humanitarian trust in English thought in the middle and late part of the 19th century, and in 1837 this Select Committee was an extremely important one in terms of looking really seriously at aboriginal policy in the Empire, and it made a strong recommendation for centralized control.

D.E. Sanders
In Chief

1 acknowledging that the results of English colonial
2 activity had been disastrous for native tribes wherever
3 it had occurred throughout the world, and to try and
4 avoid that centralization was important because the
5 local institutions would represent primarily settler
6 interests, whose interests were basically in conflict
7 with the interests of the indigenous population.

8 Now I'll read the quote in the
9 middle of page 36 from Merivale's "Lectures on
10 Colonialism and the Colonies," which also were very
11 highly regarded in an earlier period.

12 "That the protection of natives should in all
13 cases be withdrawn altogether from colonial
14 legislature and entrusted to the central
15 executive is a principle in which I think
16 even the most jealous friends of colonial
17 freedom must acquiesce. One of the most
18 useful functions of a distant central
19 authority counterbalancing to a certain
20 extent its disadvantages, is to arbitrate
21 dispassionately between classes having so
22 many mutual subjects of irritation."

Those sources which come before the 1867 British
North America Act, I think, perhaps explain why the
decision was made.

After -- I'm turning now to
page 37 -- after 1867 the first major constitutional
activity in Canada was the acquisition of Rupert's Land
and the Northwestern Territory. I spend a couple of
pages looking back at the history of acquisition of

D.E. Sanders
In Chief

1 Rupert's Land in the Northwestern Territory, and if we
2 had problems in the first section ascertaining a logical
3 theory for British acquisition of Canada, it gets, I
4 think, to its most difficult theoretical point in 1670
5 when the charter of Rupert's Land is granted to the
6 Hudson's Bay Company, and apparently vast and sweeping
7 and complete powers are granted to the company when
8 about all that England has done has been to discover
9 the bottom of Hudson's Bay. Yet the territory which
10 eventually is agreed to have been involved extends
11 through to the Rocky Mountains, a vast, and in English
12 terms, unknown area; and the transfer of the Northwestern
13 Territory is almost even more bizarre, although there
14 had been some exploration in the area. As far as I
15 can ascertain, the first -- other than the jurisdictional
16 Acts of 1802 and 1821, which just assumed that this
17 had all been acquired already -- the only thing that
18 happens after that is the confident transfer of the
19 Northwestern Territory from England to Canada on the
20 complete assumption that the rights have somehow been
21 acquired and are now capable of being transferred.

22 During the Hudson's Bay
23 although
24 Company period, the charter was extremely sweeping in
25 its language. I've quoted on page 38 ^{two} paragraphs from
26 Professor Anthony Hooper's study which was done in
27 1969 that related specifically to Northern Canada, about
28 examples of recognition of Indian title by the
29 Hudson's Bay Company. Since the company was not
30 concerned with settlement, was very anxious to avoid
31 settlement, the occasions on which treaties were seen

D.E. Sanders
In Chief

1 as necessary were very few; but there were, of course,
2 Hudson's Bay Company -- there was of course the Selkirk
3 Treaty in Southern Manitoba for the Red River settlements
4 and there were, of course, on Vancouver Island, Hudson's
5 Bay Company Treaties, as you know.

The grant of Vancouver Island
to the Hudson's Bay Company and the grant of Rupert's Land
to the Hudson's Bay Company apparently were not regar-
ded by the company as sufficient to avoid the necessity
of dealing with the Indian tribes as landowners in the
area.

I refer on page 39 to -- again
to the reference of Indian territory which in two
Imperial Statutes in 1802 and 1821, that term was used
to describe both Rupert's Land and Northwestern Territory
which of course we are presently in.

I follow then with some
information about the evolution of the Hudson's Bay
Company and its exclusive licence to trade, and the
law which would appear to have been in force in both
Rupert's Land and the Northwestern Territory at the point
of the transfer of those areas from England to Canada.

I turn now to page 41. All acquisitions of territories by Canada after 1867 involved some questions of native rights, with the anomalous exception of Prince Edward Island and the special case of Newfoundland and Labrador. The first major acquisition was Rupert's Land and the Northwestern Territory. Section 146 of the British North America Act of 1867 provided for the entry of those areas into Confederation.

D.E. Sanders
In Chief

1 by Imperial Order-in-Council on address from the Houses
2 of Parliament of Canada, and that order-in-council would have
3 the same effect as if it was part of the British
4 North America Act.

5 I quote from the two addresses
6 that occurred by the Canadian Houses of Parliament and
7 from the deed -- and on page 42 from the deed by which
8 the company surrendered Rupert's Land and that language is
9 then incorporated in the Imperial Order-in-Council itself,
10 and as Professor Peter Russell mentioned, this in fact
11 creates a unique situation in the country in that these
12 documents are constitutional documents and a constitutional
13 land
14 guarantee of a recognition of native rights in fact
occurs here.

I note in the middle of page 42
that two centuries earlier before 1870 when the charter
had been granted to the Hudson's Bay Company, no concern
had been expressed with Indian rights. In the manner
of the day, grants and charters had no mention of
aborigines.

In 1832 in Worcester v Georgia
Chief Justice Marshall had said:

"These grants asserted a title against
Europeans only and were considered as blank
paper so far as the rights of the natives were
concerned."

The concern with Indian rights
in 1869 and 1870 in the transfer of Rupert's land and the
Northwestern Territory demonstrated the degree to
which that reinterpretation of the earlier grants had
taken hold. I refer to sections in the Dominion Lands

D. P. Sanders
In Chief

Act after 1870 which make reference to the necessity of extinguishing Indian title before land grants are made under that legislation.

On page 43 I go into the question of the allotments, the half-breed allotments policy which began in Manitoba, and the list of rights of Riel's Provisional Government which were made to the Federal Government and which to some extent were accepted by the Federal Government and incorporated in the Manitoba Act of 1870.

The political background is significant and I don't think irrelevant at this point but I'll just skip over the brief reference to it there. On page 44 I quote Section 31 of the Manitoba Act of 1870. This is the - there are two basic responses, I suggest, to the Red River Rebellion and the list of rights of Riel's Provisional Government.

First was the political demand that Red River enter Canada as a province, and not as a territory, and that was basically agreed to by the Federal Government.

The Provisional Government wanted jurisdiction over land to be vested in the Provincial Government. That the Federal Government did not agree to, in a sense I suppose the compromise to Section 31 in which 1,400,000 acres were to be set aside and granted to the benefit of the families of the half-breed residents, and so provision was made, recognizing -- and this is explicit in Section 31 -- it is expedient towards the extinguishment of the Indian

D.E. Sanders
In Chief

title to the lands in the province that these grants be made to the half-breeds.

So the system of allotments began. It is a tragic story. There were administrative delays and clear administrative bungling. There was a rapid influx of white settlement into the area. Power shifted extremely rapidly and many of the Metis people left in almost exile and moved further west and further north in Western Canada.

But still the Manitoba Act stands in our history as a unique example of the creation of the Constitutional order in a frontier jurisdiction on the basis of real political negotiation and consent by a native group. It was tragic that it took a rebellion for that to occur. But it was a greater tragedy perhaps foretold by the fact that Ottawa only recognized Metis rights in a crisis atmosphere. The Metis gains in the Manitoba Act were swiftly undercut by administrative delays and confusion, and by the rapid influx of European settlers.

The Metis, who had been able to dictate much of the Manitoba Act, lost any control they had had; many went into exile further west only to face the same federal indifference and blindness which had lain behind the Red River Rebellion. The Northwest Rebellion of 1885 was the tragic last stand for the Metis. It produced an extension of the half-breed grants to the ^{north} west, but little else. By then the half-breed grants had proven to be a serious mistake, for power had shifted too rapidly to the new

D.H. Sanders
In Chief

settlers whose interests not unpredictably
the Federal Government served.

By 1885 the half-breed grants program was debased and corrupted, the extension of the program was resisted by people within the Federal Government but non-Indian interests and precedent prevailed to extent the program in an irrational manner north into the present Northwest Territories.

The next paragraph at the bottom of page 45 extending onto 46 is just a brief reference to the treaties, but Father Fumoleau has done such a superb job on that that I'll simply pass over that.

On 46 I also cite the example of British Columbia, which of course enters Confederation in 1871 after a brief separate colonial history. My interest in mentioning British Columbia is simply to indicate again^{that} on the entry of new jurisdiction into Confederation the question of Indian rights is crucial at that point. The history in British Columbia also serves as a warning against assumptions of goodwill. Clause 13 of the terms of union of British Columbia and Canada in 1871 was not explicit enough to ensure an orderly and healthy dealing with native questions in British Columbia after 1871, even on the basic question of federal-provincial disputes about reserves it was not until 1938 that the Federal and Provincial Governments were able to agree finally on that question in British Columbia, and Indian people in British Columbia have successfully recently challenged certain of the elements of that agreement of 1938.

D.E. Sanders
In Chief

On page 47 I refer to the transfer of portions of Rupert's Land to the Provinces of Ontario and Quebec, in 1912.

The Federal Government, I suggest, now had experience in relation to jurisdictional problems^{both} in Ontario and British Columbia. In 1912 they made special provision in both the Quebec Boundaries Extension Act and the Ontario Boundaries Extension Act to ensure that Indian rights would be recognized in the area. The problems are again evident by the fact that the sections in the Quebec Boundaries Extension Act of 1912 were never complied with and formed one of the major bases of the litigation relating to the James Bay hydro-electric project.

On page 48, no constitutional provisions with the Indians occurred in the Saskatchewan Act or the Alberta Act in 1905 for the reason that the Federal Government retained ownership of land and natural resources until 1930. It was in 1930 and the Natural Resources Transfer Agreements which were given effect by the British North America Act of 1930 that provisions were made in relation to reserve lands, lands for future reserves, and protection of hunting and fishing rights.

Again we have experience since 1930 showing some of the problems of an incomplete definition. The negotiations in relation to a reserve at Fort Chipewyan I think have been going on for at least ten years, and only recently I think part of the reserve allotment was finally agreed upon. There have

D.E. Sanders
In Chief

been a series of questions recently about hunting rights because of provincial actions in the Prairie Provinces designating areas as preserves or parks, and thereby attempting to limit Indian hunting rights in the area.

At the bottom of page 48, I come finally to the Northwest Territories itself as presently defined. The Carrothers Commission in 1966 described government in the Northwest Territories as:

"A colonial form of government."

This is a technical description which I suggest is basically still true. In a review of government in the Northwest Territories in that report, which takes 19 pages, only one paragraph is assigned to the Department of Indian Affairs, and I'll read that paragraph:

"On January 1, 1966, the Indian Affairs Branch was transferred from the Department of Citizenship & Immigration to the Department of Northern Affairs, thereby placing administration of Indian affairs in the north in the same department as Eskimo administration."

More space was spent on the Post Office than on the Department of Indian Affairs.

In a review of types of local government in the Territories, no mention is made of Indian Band Councils. The report is striking in its omission of any discussion of the Indian Act or the Department of Indian Affairs. This occurred, of course, for the very real reason that neither the Act nor the Department played any significant role in the life of people in the Territories. Indeed in

D.E. Sanders
In Chief

1 1967 a year after the Commission's report, the Department
2 of Indian Affairs commenced to withdraw personnel
3 from the Northwest Territories, but not the Yukon. This
4 created a unique situation in terms of formal, federal
5 native policy, since the powers of the Territorial
6 Council are confined to provincial powers the situation
7 was created which minimized, it seems to me, as much as
8 possible any special legal regime for Indian people.

9 The membership sections of the
10 Indian Act applied to the Territories, but this I
11 find paradoxical for the membership system historically
12 developed in Southern Canada ^{as a} concomitant to the reserve
13 system. It was designed to protect the reserve land
14 base by defining and limiting the people who could be part
15 of an Indian Reserve community. In the Northwest
16 Territories where there have been no reserves until
17 the Hay River Reserve, the membership system meant
18 treaty payments of \$5. a year, but little else.
19 The more modern consequence of Indian status which I
20 suggest is a claim to services from the Department of
21 Indian Affairs, did not exist after the withdrawal of
22 the Department in the years immediately after the
23 Carrothers Report.

24 In the paper on the philosophy
25 of the Department of local government prepared in
26 January, 1975, there was an acknowledgment of the
27 conflicting or overlapping roles of Indian Band
Councils and Settlement Councils in the Northwest
Territories. There was also a statement that native
land claims,

D. E. Sanders
In Chief

"clearly have an important bearing on the future forms and structures of both local and Territorial Government."

I should note that the has Department of Indian Affairs' re-established a presence in the Northwest Territories and I think that is in fact the term which they use for the office that they have here, it is not a program office, it is more a liaison role, it is a presence . That, the re-establishment of that was a direct result, in my understanding, of submissions by the Indian Brotherhood.

Returning to page 50 of my Natural text, recently Mr. Justice Morrow spoke at the Resources Institute in Winnipeg on native land claims and the proposed pipeline. Part of his speech, as reprinted in "News of the North" read -- and I quote:

"I invite you to study the history of our west for the periods leading up to 1870 and 1885, the periods of the Riel Rebellions. We are almost in the same position in our north today. I do not mean to imply that the rank and file of our Indian and Eskimo people are revolutionaries. Not at all. But I am implying that the same feeling of frustration and desperation are there."

I hesitate to select just this one statement from Mr. Morrow's speech, because it may seem sensationalistic, but I was struck by this statement for I think there are certain direct parallels between the situation on the prairies after 1869 and the present situation in the Northwest Territories. In

D.E. Sanders
In Chief

both situations the native people faced the loss of numerical superiority, and the political power that superiority meant or could mean. In both situations basic provisions for native land rights, including the lands upon which native people had homes, had not yet been made, though major non-native entries into the area were imminent. In both situations Ottawa and the federal politicians were seen as distant figures with little knowledge or understanding of the territory now being "opened up". That lack of knowledge and understanding was coupled with sweeping power, the exercise of which could not be called to account by political forces in the new territory. In other words, both areas suffered from a colonial style relationship to the central government. In both situations major non-native land use projects were in their initial stages and a major revolution of the constitutional status of the area was occurring. In my mind, the closest parallel to the present situation in the Northwest Territories is the one drawn by Mr. Justice Morrow, the situation on the prairies in the years between 1870 and 1900.

I suggest that Canadian constitutional history on the review I've just done would indicate that decisions relating to a resolution of native land claims and decisions relating to the constitutional evolution of the Northwest Territories cannot be separated. I suggest that the recent land claims of the Inuit confirms this analysis.

My conclusion for this

D.E. Sanders
In Chief

portion; there is in Canada a history of recognition of Indian aboriginal title beginning with the Royal Proclamation of 1763 and carrying through with historical and geographical continuity to the present Northwest Territories. Such continuity does not exist for certain other areas such as British Columbia, Southern Quebec, and the Maritime Provinces, including Newfoundland and Labrador. To disregard Indian aboriginal title in the Northwest Territory would be to disregard the strongest line of historical recognition in the country. There is in Canada in the years after 1867 a history of concern with native policies at the time of the evolution of colonies or territories to provincial status. To a large degree this results from the fact that native policy is normally federal and control over land and natural resources is normally provincial. That division of power makes constitutional provisions for Indians in provincial constitutional documents necessary.

I come now to my final section, which is the shortest of them all. The relationship of non-native land use and the resolution of aboriginal title claims. Earlier it was suggested that there were five differing kinds of property regimes or property rights which could emerge from a resolution of aboriginal title claims. I list them again:

- (a) a system of recognition and conversion;
- (b) reserves
- (c) allotments
- (d) corporations or trusts holding land

D.E. Sanders
In Chief

(e) usufructuary rights to hunt, fish, trap, gather
and harvest the land.

D. E. Sanders
In Chief

1 This is a list which is drawn
2 from experience -- from the experience in colonial
3 areas. These are all in place in particular areas and
4 I'm not dealing at this point with any sovereignty
5 questions or any formal grant of legislative power to
6 native groups.

7 It seems clear that permitting
8 non-native land use without a resolution of aboriginal
9 title claims necessarily compromises the nature of the
10 claims or assumes a particular type of resolution of
11 the claims. To see the question simply in terms of
12 expropriating either government crown lands or expro-
13 priating Indian lands fails, I suggest, to appreciate
14 the alternative possibilities of native ownership that
15 could follow a resolution of aboriginal title claims.

16 To pick two alternatives, the
17 expropriation might be of individual private land
18 holdings under an allotment system or the expropriation
19 of property rights held by a corporation for all Indian
20 people in the Mackenzie District. It also fails, I
21 suggest, to appreciate that in legal regimes of native
22 land, there have normally been special restrictions on
23 expropriation with the result that the process of
24 expropriation itself is not the same for Indian lands
25 and non-Indian lands. That of course is true for
26 Indian reserve lands in southern Canada.

27 The variants involved are
28 not simply those of ownership and compensation but also
29 of control.

30 Thank you Mr. Commissioner for

D. E. Sanders
In Chief
Cross-Exam by Bayly

1 your patience.

2 THE COMMISSIONER: Thank you
3 Mr. Sanders.

4 I think that we'll stop for
5 coffee for a few minutes.

6 (PROCEEDINGS ADJOURNED FOR A FEW MINUTES)

7 (PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

8 MR. BELL: Mr. Commissioner,
9 we filed as exhibits the complete text of Mr. Sanders
10 statement plus a summary and biographical appendix
11 thereto.

12 Mr. Sanders is now available
13 for cross-examination.

14 MR. SCOTT: Mr. Bayly?

15 CROSS-EXAMINATION BY MR. BAYLY:

16 Q Mr. Sanders, you spoke
17 about the settlement of the Manitoba Metis claims as
18 being one that had the potential for success. It
19 appeared from your evidence that one of the things that
20 may have gone wrong with that settlement was that in
21 terms of being able to implement it, it was followed
22 so closely by an influx of people from eastern Canada
23 that virtually the territory was swamped before the
24 settlement could be implemented. Would you agree with
25 that?

26 A Yes, I think there's
27 two ways of looking at it. The settlement that was
28 put in place was somewhat different than that proposed
by the provisional government of Red River. You had
Metis political institutions in place and in effect

D. E. Sanders
Cross-Exam by Bayly

I think what the provisional government wanted was the control to be given to those existing institutions. If that had happened, then I would assume that the history of implementation would have been extremely different because it would have been a local group concerned with the existing half-breed population.

When that was not done and the power over land was retained by the Federal Government, this, I think created a very substantial implementation problem and you have clear delays which presumably were unanticipated when the act was passed and it's my impression that you never in fact are able to get an implementation. Grants are made but the thing becomes really quite chaotic very quickly and certainly, you know in terms of implementation I think it would be wrong to say that there was an implementation and there would have had to have been either considerably more rapid federal movement in terms of the allotments, or just a structured period of time to allow the implementation to be completed before the influx of settlers.

Q In the Northwest Territories would you agree with me that there are no analogous institutions to the local government institutions that the Metis had in Manitoba?

A I think it's very different.

Q In Manitoba, the Metis were familiar with the institutions that they had, you've stated?

A Yes, they'd been created

D. E. Sanders
Cross-Exam by Bayly
Cross-Exam by Sigler

1 essentially out of the organization of the buffalo
2 hunts and that evolved very clearly, so it's not just
3 a provisional government which was created at the time
4 of the Red River rebellion. You have some backup to
5 the institutions which in form were created at the
6 time of the rebellion and so they appear to be, you
7 know, quite functional.

8 Q Would you agree with me
9 then that if you were going to implement a land claims
10 settlement of whatever kind resulted in the Northwest
11 Territories, you would either have to use institutions
12 which are presently being used if they existed or
13 you would have to give some time to the people to learn
14 how to implement new institutions?

15 A Yes.

16 Q I gather at this point,
17 it's impossible to say what that time period might be?

18 A I think it would be
19 necessary to have a far more detailed understanding of
20 the local native communities here than I have, to make
21 any kind of estimate on that one.

22 MR. BAYLY: All right. Those
23 are all the questions I have. Thank you.

24 CROSS-EXAMINATION BY MR. SIGLER:

25 Q Mr. Sanders, you referred
26 to the Carrothers Commission report for a statement that
27 what the Northwest Territories has is a colonial form
28 of government. Would you agree that that form of
29 government is a colonial one not only for native people
30 but for non-native people in the Northwest Territories

D. E. Sanders
Cross-Exam by Sigler

1 as well as for all residents of the Territories?

2 A Yes, I agree.

3 Q I tried to be careful to
4 suggest that I wasn't using the term necessarily in
5 a pejorative context at that point but simply as a
6 technical description of the situation here. What would
7 be the elements, in a technical or legal sense in your
8 mind to a colonial system of government as opposed to
9 a -- to other types of government?

10 A The political power basically
11 ly does not rest here and with the population here.

12 Q Now when, using the
13 example of Manitoba again, and the Manitoba Act. Under
14 the Manitoba Act, I take it there was^a new institution
15 of government set up for the new province of Manitoba
16 that ended colonial government for Manitoba?

17 A In part. It was certainly
18 an ending of some of the elements of colonial government
19 but the fact that the Federal Government retained
20 ownership of land and natural resources still made
21 Manitoba much more dependent on the central government
22 than the provinces that were already in the Confederation
23 such as Ontario and Quebec.

24 Q So then you're saying that
25 really, the real end of colonial government at least in
26 terms of bringing the people in the Territories to the
27 same point that people in the original provinces were,
28 only happened when there was the transfer of resources
29 and land to the newly created provinces?

30 A That's correct.

D. E. Sanders
Cross-Exam by Sigler

1 Q That would say be at
2 1934 for Alberta, Saskatchewan.

3 A And Manitoba, yes.

4 Q Right. Now Mr. Manuel,
5 when he gave his evidence yesterday called for the
6 re-organization of political institutions to include the
7 element of political sovereignty and political self-
8 determination as something that was necessary, in his
9 view to a just and equitable settlement of aboriginal
10 land claims. I wonder from your experience in reviewing
11 the common law if you could tell us whether the common
12 law ever recognized the retention of aboriginal political
13 institutions or political sovereignty, self-determination
14 by the aboriginal peoples as incidents or elements of
15 aboriginal title?

16 A The colonial legal
17 tradition is essentially to begin with the denial of
18 sovereignty. Some native groups in eastern Canada have
19 -- were recognized as allies. That term was used.
20 It's/^{used} in the articles of capitulation in 1760. It's
21 used in the grants that were made to the six nations
22 Indians when they came up to Canada from what is now
23 the United States after the American revolutionary
24 war. The argument has been made on the basis of that
25 usage that a recognition as allies is something
26 different than a recognition as subjects, and that it did
27 constitute a kind of recognition of at least internal
28 sovereignty by the Canadian nation.

29 That argument has been made
30 on the basis of those materials, I think really only once

D. E. Sanders
Cross-Exam by Sigler

in a case called Logan versus the Attorney-General of Ontario in the 1950's and was rejected by the Ontario High Court. There becomes some sort of a terminological problems in the sense that the term "sovereignty" or elements of sovereignty or quasi-sovereignty is used very widely in the United States law as a phraseology basically used by the courts in judicial decisions to describe the nature of Indian self-government on the reservations in the United States and that has quite long roots in the United States law so in terms of the U.S., one can use the term "sovereignty". It is used, as I understand it in the U.S. courts in much the same way as they used the term to describe the powers of states within the union.

So, there becomes some sort of problems in transporting that terminology since, in Canada, we haven't had a tradition of use of the terminology. But, it seems to me that there are some very strong parallels between reserve government in the United States and reserve government in Canada and certainly I think in terms of federal policy, if we're moving in any direction from federal statements it's certainly to increasing band powers in relation to reserves in southern Canada. So, we may be moving very close to what in the United States is referred to as sovereignty.

O You say that there may be some basis in law for the Dene arguments for political sovereignty and self-determination?

D.E. Sanders
Cross-Exam by Sigler

A It would be incorrect to say that the English colonial tradition uniformly and completely denied sovereignty. I think it would be incorrect to say that it ever recognized whole sovereignty on the part of the tribes. You get a sort of series of examples and treaties of cession, ceding sovereignty from native tribes to European colonial powers were recognized as effective cessions of sovereignty resulting in the acquisition of the territory by cession.

In spite of the fact that the European countries would still state that the tribes were not -- did not have international personalities as sovereign nations. So you get a sort of compromise situation. They're sovereign to the degree that they can cede sovereignty but they are not sovereign in the sense that we'll recognize them internationally as being equivalent to the European nation.

The, what are called treaties of peace and friendship in the Maritime Provinces which were entered into between 1713 and about 1763, there were a series of maybe half a dozen of those. The situation during that period was one of intermittent warfare between English and Indians in the area and the treaties mark peace -- they are in fact peace treaties and are not concerned with transfer of land but are concerned with the Indians affirming or reaffirming allegiance to English sovereignty. So in that sense, those treaties do deal with the question of sovereignty. The Treaty of Waitangi in New Zealand in 1840 is clearly a treaty dealing with

D.E. Sanders
Cross-Exam by Sigler

1 sovereignty. It does have a provision about land but
2 that's just to establish the Crown right of pre-emption.
3 The treaty itself does not transfer any land.

4 Fiji was also acquired by a
5 cession of sovereignty by native leaders to England.
6 The examples in Canada are limited but the history
7 is not one without a few.

8 Q So it's because of this
9 lack of, say recognition in the international community
10 that you have made your first analogy to the American
11 state in their treatment of the United States -- your
12 discussion there -- to have a sovereign entity within
13 a Canadian nation?

14 A The kind of paradox
15 of this situation were explored to some extent by the
16 Marshall Court Judgments in the United States in the
17 early 19th century. The major case is that of Cherokee
18 Nation versus Georgia. The Cherokees attempted to
19 invoke original jurisdiction in the United States Supreme
20 Court in disputes between states or between nations,
21 claiming that they had the status of a nation and the
22 State of Georgia had the status of a state; that they
23 could therefore begin the litigation in the United States
24 Supreme Court.

25 The judgment, there was
26 a split decision with a minority upholding original
27 jurisdiction. The majority decision being given by
Chief Justice Marshall which for the first time he
gives -- I think it is the first time. It might have
been in Johnson v McIntosh as well -- he uses the phrase

D.F. Sanders
Cross-Exam by Sigler
Cross-Exam by Hollingworth

"dependent domestic nation". In a sense the contradictions of the situation are encapsulated in this kind of phrase. Nationhood or sovereignty is recognized but not in a completely international sense. It is confined within the dependency created by the realities of colonial experience and Marshall is very clear in his judgments in acknowledging that that limitation is a recognition of "real politik ." as Professor Russell said yesterday. That was an overwhelming political reality which the Courts since they were created as a result of the colonial process and are not neutral historically in that situation. It was a political reality which the Courts could not override.

MR. SIGLER: Those are all my questions.

MR. SCOTT: Mr. Hollingworth?
CROSS-EXAMINATION BY MR. HOLLINGWORTH:

Q Mr. Sanders, I was interested in your discussion of systems of recognition and conversion of native title, and as I understand your presentation and your exchanges with the Commissioner, there's a creation of the, what you call the European style title in New Zealand for example. Is that correct?

A That's correct.

Q Would you equate that with the "fee simple" concept as we understand it in this country?

A Yes.

Q Well, does the "fee simple" go to the native owner subject to the right of eminent

D.E. Sanders
Cross-Exam by Hollingworth

domain?

A That's been a matter of some controversy in New Zealand. Clearly in national terms, there is a right of eminent domain and I am not aware of a general exemption of Maori land in New Zealand from a legislative right of eminent domain.

There has in the country been, as I understand it, expropriation or eminent domain powers vested in local levels of government under I think it's called the Town and Country Planning Act and that has been a matter of some controversy in New Zealand because the local authorities under that legislation didn't have the power of expropriation.

The power of expropriation existed in the system but the system that was in place, in fact, treated Maori land somewhat differently than other land in terms of expropriation. Expropriation, of course, can take place in Canada in relation to Indian reserve land where reserves exist, but the legal rules are somewhat different and it requires an explicit consent of the Federal Cabinet to permit it to occur.

Q Is that because the lands are considered to belong to the Dominion of Canada still that are on reserve lands that that proceeds?

A No. Because reserve land -- the question of the exact ownership of reserve land in this country is in fact much more complicated than one would expect. You have titled at some points in private owners. You have titled at some points -- we are talking about theoretical title, theoretical titling in the

D.E. Sanders
Cross-Exam by Hollingworth

1 Crown in the right of a province in some instances, some-
2 times the theoretical title in the Crown in the right of
3 the Federal Government.

The jurisdiction over lands reserved for the Indians which has been given to the Federal Government allows the Federal Government to control use and possession, occupancy of Indian reserve lands. It appears to be the base under which the Federal Government can make special provisions in relation to expropriation. So it's in fact a question of legislative power rather than simply a question of federal ownership. It is federal legislative power which makes it -- makes the provinces constitutionally unable to expropriate. There is then a provision in the Indian Act which deals with the question of expropriation. It says that expropriations under the provincial statute can only occur with the consent of the Governor-general in Council.

19 Q Well, wouldn't you
20 foresee this business of eminent domain as being a bit
21 of a problem if you wanted to maintain it because it
22 seems to me that eminent domain closed from the fact that
23 the lands are granted to the owner from the Crown subject
24 to the right of eminent domain. Wouldn't that be a fair
25 statement in say your land in Victoria and my land in
26 Calgary?

27 A I'm not concerned
28 conceptually with whether it is a limitation on the grant,
29 as you have suggested or whether it is simply an exercise
30 of parliamentary sovereignty. It doesn't to me matter.

D.E. Sanders
Cross-Exam by Hollingworth

Q You feel it could be an exercise of parliamentary sovereignty, that you could have --

A Yes, I think that's --

Q Allowed.

A One could argue it both ways. I suspect in English property law.

Q Well, do the -- excuse me -- do the Maori lands in New Zealand carry with them the ownership in the subsurface rights?

A I'm sorry, I don't know in relation to New Zealand. My impression is that there has been very little subsurface development in fact in New Zealand. I'm not aware of any litigation. There might be legislative provision on that but I'm sorry I don't know.

Q Have you had any thoughts on the matter if this system was applied in the Northwest Territories?

A Well, the only decisions which I can refer you to on the question of subsurface rights are judicial decisions in the United States which deal with the question of whether aboriginal title includes subsurface rights as well as surface rights. The ruling there has been that they are included. There is another -- only one other Court decision on that point that I'm aware of which is a decision of the High Court of Australia which is equivalent to the Supreme Court of Canada and which is an appeal from what was then the Territory of Papua, New Guinea with a statute vesting

D.E. Sanders
Cross-Exam by Hollingworth
Cross-Exam by Steeves

subsurface rights in the administration as they call it. We would say Crown, and the question was whether this was an expropriation without compensation and the, which is partially forbidden in the Australian Constitution and they ruled that it might well be -- that it was within the legislative power of the institutions to do it and therefore they avoided the question as to whether the subsurface rights in fact attached to the native title. Those are the only legal authorities I am aware of on that point. Those were cited to Mr. Justice Morrow in the Paulette case as the only authorities we were aware of. I'm not aware of any ruling in Canada which deals with the point.

MR. HOLLINGWORTH: Okay, thank you. Those are my questions.

MR. SCOTT: Mr. Steeves?

CROSS-EXAMINATION BY MR. STEEVES:

Q Sir, if the New Zealand model of dealing with aboriginal rights were transferred to the Northwest Territories, would the government in Ottawa maintain the veto power over disposition of lands as to which there was a claim by native groups?

A If the New Zealand model was transferred to the Northwest Territories there would be a veto in an institution that it would be the equivalent of the Maori Land Court which is established in New Zealand with the same kind of independence as I understand it as the regular judicial system.

Q So there is no veto power in the equivalent of the Indian -- the Department

D.E. Sanders
Cross-Exam by Steeves
Cross-Exam by Scott

of Indian Affairs and Northern Development in this system.

A It does not vest in a government administrative department.

Q It vests in the Court?

A That's right.

CROSS-EXAMINATION BY MR. SCOTT:

Q Mr. Sanders, in your paper, you gave examples of recognition and conversion systems in other jurisdictions. Are there any examples of such recognitions of native customary law of hunting and gathering societies as opposed to agricultural societies?

D.E. Sanders
Cross-Exam by Scott

A I'm not aware of any system of recognition and conversion which has been applied to a society with no agriculture. There might be some in Africa, but I don't know that, it's just my knowledge of the African systems is extremely limited. I really rely on my familiarity with the ones in the South Pacific. In New Zealand there was a deliberate, an express provision that the recognition extended not simply to the cultivated lands, also to hunting lands there, so it encompassed both kinds of lands but with groups that had both a hunting and an agricultural economy.

Q Well, what do you say about the problems, if any, associated in applying recognition and conversion to communities where hunting and gathering societies are the rule rather than an agricultural society? Are there any difficulties associated with that, that you foresee?

A I don't on a theoretical level see any difficulties. The end results may look a bit different for the basic reasons that the land areas which are owned would be much more extensive and the -- for some of the groups the group in ownership might also be more extensive because sometimes in the agricultural areas you will have ownership of a very specific piece of land by perhaps an extended family unit as though not even a sort of band level so the number of owners may be quite small. But in New Zealand you do have a situation in which for significant lots of land you have ownership in the hundreds and over

D.E. Sanders
Cross-Exam by Scott

1 a thousand individuals as the collective owners of the
2 area, so the numbers game may not in fact be any
3 different than some of the things that happened in
4 New Zealand, but the scale of the land would be rather
5 different. There is one particular problem which
6 would probably have to be considered very seriously,
7 it's a problem that has existed in New Zealand. Maybe
8 it wouldn't occur here as much. The system also pro-
9 vided individual Maoris who wanted to sort of
10 separate out their interest, who were moving more to
11 the private ownership business in terms of their own
12 management of their own resources, and there were
13 clear problems in New Zealand in sort of administrative-
14 ly handling that. That, I would think, would have to
15 be considered here. But I don't see any theoretical
16 problem applying those systems to a hunting territory.

17 Q Turning to another
18 matter, could you just list for us with comment, if
19 you think it necessary, the characteristics of aborig-
20 inal title as recognized as you see it in Canadian
21 law? What are the characteristics of that title?

22 A There is a pattern firstly
23 of describing it as a right to use and possess as a
24 possessory title, as a usufructuary title. I think that
25 this is related conceptually to the notion of the Crown
monopoly on acquisition and also to the ruling in the
St. Catherine's Milling case that Indian title was in
fact not transferable at all, so that the process
legally which occurs at a valid Indian treaty is
that the rights to use and occupy of the Indians is

D.E. Sanders
Cross-Exam by Scott

ended, and at that point then the exclusive right of use and occupancy having been ended, you then look to the general principles of Canadian constitutional law to determine what level of government then holds those lands as unencumbered Crown lands. The limitation of transferability appears to be the reason to describe the title as a usufructuary title. It does not appear to be any other limitation which has been defined to the title other than the limitation of transferability. The usufruct concept involves the notion of having the right to use, possess and exploit the resources of the land.

Q Well, I'm not quite sure I'm following you. One characteristic, perhaps not the first, would be what you call its possessory nature.

A M-hm.

Q Or usufructuary, a word I'm not happy with. The second characteristic would be that the -- its inalienable nature, is that what you're saying?

A That's correct.

Q Would a third characteristic be the communal way in which it is held?

A I don't think that's a distinctive characteristic of Indian title or aboriginal title because of course in our legal system we have a number of methods of communal ownership of lands. You have to begin --

D.E. Sanders
Cross-Exam by Scott

Q I recognize that in the Euro-
Canadian system , as we're coming to call it, there are
such techniques for group title; but would it be correct
to say that communal title is universally characteristic
of aboriginal title? In Canada at least, in Canadian
law.

A I think there's a danger
in that, in that while I can agree with it, I think it
might be misleading in the sense that among some of
the groups you have not band or tribal ownership but
ownership in clans or extended family groups. So in
terms of the numbers of people involved it's relatively
limited, it's not a standard assumption that you have
a band and a band has complete communal ownership to
all parts of the tribal territory. On parts of the
north coast of British Columbia you could have parti-
cular fishing sites or gathering areas, seaweed areas
which were owned by a particular family, and therefore
you had that internal land-holding system vesting
ownership in particular families or extended family
groups. Now that's not a completely individual thing
in which one person owns a particular resource. If
it's only that that we're excluding, I think it's
true that in customary land systems in Canada that
ownership was always communal.

Q And could you go on to
say that the nature of the communal ownership was that
the owner, if you can use that word, was an identi-
fiable ascertainable group tribe, nation, even family
perhaps.

D.E. Sanders
Cross-Exam by Scott

1 A Yes.

2 Q What about recognition of
3 hunting and fishing rights, is that a characteristic
4 or an incident of all aboriginal title in Canada?

5 A Yes, I think so. That's
6 one of the virtues, if there are any, to the term
7 "usufruct" which indicates it has Roman law origins and
8 involves things like being able to pick apples off
9 the tree on the land and things of that kind. So
10 you're clearly able to use the fruits of the land. I
11 should mention, as you probably know, that Mr. Justice
12 Judson in the Calder case rather proposed the use of
13 the term "usufructuary" as being particularly useful
14 or enlightening in the whole circumstances; but I think
15 we still use it because he didn't give us any other
16 term to use, although he wasn't very happy with that
17 one. There has been a bit of confusion in the Courts
18 on the question of off-reserve hunting rights as to
19 whether they legally are considered to attach to
20 Indians as Indians, or whether it's possible that they
21 should be considered as rights to use land and there-
22 fore within federal jurisdiction in relation to lands
23 reserved for the Indians. The major ruling appeared
24 to be the White and Bob case which defines those rights
25 as far as legislative power is concerned as flowing
26 from federal jurisdiction over Indians. There's a
27 recent decision of the Nova Scotia Court of Appeal in
28 the Isaac case in the reserve context which seems
29 to describe on-reserve hunting rights as a property
30 right and under federal jurisdiction for that reason.

D.E. Sanders
Cross-Exam by Scott

Q Well, to put the question in a different way, sir, to be sure I have a reasonably complete list of characteristics of aboriginal title, what are the limitations, if any, on that title, apart from the ones you've covered, as compared to the Euro-Canadian fee simple?

A I think the only limitation is transferability.

Q Well, what do you say about the right of the Crown to permit a transfer or to take possession of that title? Is it in any sense distinct or first of all does that right exist, and in the second place is it in any sense different from the right that exists in the case of fee simple?

D. E. Sanders
Cross-Exam by Scott

A I'll try to answer and if it doesn't deal with what you're asking, I think we may have to try again but the -- I think there's some confusion in the court judgements^{and} in the legislation on the problem of transferability because in effect what happens in relation to reserve lands in the country is that, what one could describe as a transferable usufruct comes into existence, which in absolutely orthodox terms is a contradiction in terms that the Courts, particularly in the Star - Crown case from Quebec define Indian rights to reserves as a usufructuary using the same terminology which the St. Catherine's case applied to Indian rights to unsurrendered traditional lands.

There was then, by legislation created a transferability of those reserve lands which have been defined by the Courts as having a usufructuary Indian interest in them. So, what we've done is in effect alter the concept in relation to reserve lands so that in terms of creating a transferable usufruct, we have done it in that context, we could do it in others.

Q Well then, taking the question more broadly, what do you say about the possibility of taking aboriginal title as it exists in Canadian law and building into it some control in the community that leads even to alienation that's not dependent on the will of the sovereign? Are there any difficulties in that?

A I see that not as a theoretical problem but essentially a choice of method.

D. E. Sanders
Cross-Exam by Scott

1 It would be possible to say, "Fine, the political
2 situation of these particular communities is such that
3 there is no reason now for protective institutions.
4 We will simply vest ownership with transferable rights."
5 I don't see any theoretical problem with doing that.

6 Q I take it from what you've
7 said and correct me if I'm wrong that the -- under
8 the general supervision of, for example, the New Zealand
9 Land Court, that's precisely what's happened there,
10 isn't it?

11 A That rights of transfer-
12 ability have been given to Maori groups?

13 Q That the recognition
14 and conversion system has been introduced which creates
15 a title that meshes with the Euro-Canadian title
16 system and that under the general supervision of that
17 court or perhaps even without it, alienation is -- and
18 therefore, full control by the communities is developed
19 and permissible.

20 A The New Zealand situation
21 can be explained in terms that private transactions
22 in Maori land which have the result of converting it
23 from Maori land to Euro-New Zealand tenure are possible
24 and the Maori Land Court play a sort of supervisory
25 role in relation to that, one which might, at some
26 point be able to be dispensed with.

27 Q Yes, but under that system,
28 the power of the communal owner goes beyond the ability
29 to surrender the land to some crown use and goes further
30 to the ability of the community to surrender the land

D. E. Sanders
Cross-Exam by Scott

third parties. That is, to deal with it under the general supervision of the Court as you would deal with it in fee simple.

A In fact, the crown monopoly on preemption in New Zealand which was formally established by the Treaty of Waitangi in 1840 is very quickly abandoned in New Zealand and within the first five years after 1840 there's an attempt to legally institute private dealings with no supervisory jurisdiction at all in anything like the Maori Land Court. What you get with the Maori Land Court is not really the kind of Crown monopoly on acquisition that we're familiar with here at all. It can be seen as private dealings and simply sanctioned by the services of the Maori Land Court.

Q So would it be correct to say that when the recognition and conversion scheme is introduced, the parallel is to a land owner owning land subject to some kind of trust which may be conveyed under the general supervision of our Courts?

A Well, I have a little difficulty with the part of your statement that says "under the general supervision of our Courts" because I think that suggests a particular kind of institution to handle this -- what we've been referring to as a kind of supervisory role. It seems to me that there are sort of two obvious alternatives here, one of which is to do something like the New Zealand Maori Court -- Maori Land Court which in many ways is clearly an English style institution and in some of the quotations in my paper

D. E. Sanders
Cross-Exam by Scott

1 in the section on New Zealand, I quote from Allan
2 Ward's book of a couple of years ago which describes
3 that early period and describes it before the Court was
4 established in the form of a Court. There was a,
5 in our terms, less formal, less centralized system in
6 which local Maori leadership played a decisive role in
7 that process and that Ward's analysis is that in many
8 ways, it's formalized in European style to facilitate
9 sales rather -- it's that kind of motivation which results
10 in making the institution one which is more distant
11 culturally from the Maoris and in the mainstream of
12 English traditions.

13 So, it seems to me that the
14 general choice is how native or how European is this
15 institution going to be?

16 Q Yes, but leaving aside for
17 the moment whether this supervisory institution be native
18 or European, I suggest to you that the scheme, that is
19 a scheme in which under our law, a trustee submits to
20 supervision when he sells, for example, the lands of
21 minors or estate lands or what have you, is parallel
22 that there's nothing odd, unusual about that in our
23 system?

24 A Yes. I don't see it
25 conceptually as being quite the same as the New Zealand
26 situation in that the -- our concept of trustee is the
27 trustee sells on behalf of, so that with surrendered
28 reserve lands in southern Canada, the Crown sells or
29 leases as trustee on behalf of the band, whereas in
30 New Zealand what happens is that a private transaction

D. E. Sanders
Cross-Exam by Scott

1 between one, two, three, four, five Maori owners to
2 a European, that which is in the nature of a private
3 transaction is sanctioned. Maybe I'm just being --

4 Q I guess all I --

5 A -- picky.

6 Q -- wanted you to say is
7 that Canadian, Euro-Canadian law would not regard that
8 kind of model as foreign in the sense that we have within
9 our^{own} law that kind of scheme in which conveyances of
10 certain types require supervision.

11 A Fine, I'll agree.

12 Q Even under the ^xfee simple
13 system.

14 A Certainly.

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D.E. Sanders
Cross-Exam by Scott

Q Well now, let me ask you one other question, dealing with recognition and conversion. The implementation of any recognition and conversion system, it seems to me, has to take account either to acknowledge, to modify, or to destroy non-existing non-aboriginal uses.

A That's, to say that, I think is to be somewhat purist about it.

Q Well, forget that.

A I don't mind.

Q Well, let's see if I can take a practical example, and deal with the New Zealand system as an existing model. An application is made, let us say, for recognition and conversion of a large territory to be held in the name of an aboriginal community which includes the City of Yellowknife. I presume that under the New Zealand system those who hold title in the City of Yellowknife, no matter how their title is derived, have a right to be heard in that kind of process.

A This -- yes, I think you get this turning up, the problem of "rights" which have been acquired prior to the formal implementation of this kind of system. That was true in New Zealand. There had been private dealings with Maoris before the Treaty of Waitangi and before the Maori land as an institution came into being. What they did at the beginning there is really quite a different situation from what we're facing here now or someone may face here now. They simply said, "O.K., any private

D.E. Sanders
Cross-Exam by Scott

dealings which have occurred up until now are not assumed to be valid but the whole thing will be investigated, so in a sense you create some special way of looking at that. In one of the tasks that the Land Titles Commission in Papua, New Guinea has is the investigation of old claims and there are claims for some of the towns and cities there which have some very substantial European populations, so the question of looking at that is entrusted to the Land Titles Commission which also handles the recognition and conversion work. I think what I'm saying is this, that I don't think there's any sort of obvious political resolution of that question that I can really speak to on the basis of the kind of material I've been trying to describe and I would define it essentially as a political problem, not to denigrate it in a sense, but to say that obviously any settlement has as a very important component of it, defining the relationship between aboriginal population and the settler population and at this point in the Northwest Territories we're not starting with a clean slate.

Q What I am merely interested in getting at is confronted by that problem which is essentially one of competing claims, as I see it, in these models you've referred to is the solution political or is it judicial in terms of the land Court?

A The only one I'm familiar with which would have an experience which could be comparable would be the New Guinea one and my understanding is that essentially what is done in relation to

D.E. Sanders
Cross-Exam by Scott

-- they'll have a hearing and sometimes you'll get questions of early acquisition there which you wouldn't have here. I think that the claim there is essentially converted to a claim for compensation other than land for your existing towns and your existing European settlements. European land-holding in New Guinea is now and undoubtedly will continue to be relatively minor in terms of this whole--

Q Doesn't this problem occur in New Zealand?

A Well, the system developed early there and there is almost no settlement in New Zealand prior to 1840, so the instances of acquired rights before 1840 by Europeans is really^a very minor kind of issue, and Maori title is recognized in New Zealand from the beginning, although there are variations, particularly in the first 25 years, as to exactly how it's handled legally, and the present form is really put in place in 1865. But that is not put into place with any history prior to 1865 of non-recognition. So I think it's for those kinds of reasons that the situation that you're describing here in the Northwest Territories today did not happen in New Zealand.

Q Well, I guess really what I was leading up to is, is there any tribunal in any other jurisdiction with which you're familiar that has developed guidelines for the resolution of this kind of competing claim, and do I understand that the answer is really "No." It either doesn't exist as a

D.E. Sanders
Cross-Exam by Scott
Cross-Exam by Steeves

1 problem, as in New Zealand, or it achieves -- it is
2 resolved by political solution.

3 A Well, it is handled by
4 the Land Titles Commission in New Guinea. I am not
5 aware of anything that could be described as legal
6 principles which have been applied to this situation.
7 There have been very complex and lengthy hearings
8 on these questions in relation to specific claims in
9 New Guinea. That is not a completed process, at least
10 when I was in New Guinea in '72 there were hearings
11 going on at that point and it seemed clear that those
12 particular claims and that particular work of the Land
13 Titles Commission was going to continue for a while.
14 They have had a Commission since then, examining some
15 aspects of the land system in New Guinea, and I haven't
16 seen the report on that to see whether that talks of
17 any general guidelines on the particular problem.

18 MR. SCOTT: Those are all the
19 questions I have. Thank you, Mr. Sanders.

20 MR. STEEVES: Sir, could I ask
21 one question?

22
23 CROSS-EXAMINATION BY MR. STEEVES (CONTINUED):

24 Q Mr. Sanders, what is the
25 issue in New Zealand for this land claim? Is the issue
26 this, what do you, the owners of these aboriginal rights,
27 want to do with those rights? It's not in your best
28 interests and we're not going to approve it, or is in
29 your best interests and we'll approve it. Is that
30 the essential issue?

D.E. Sanders
Cross-Exam by Steeves

A That's one issue, it's not the only issue, because there is also the administrative work of ascertaining the exact native ownership, which individual people at a particular point, are the members of the owning group of the piece of land held under Maori customary land law, because there is no necessity in these systems to define that, to list the people to create those titles, as long as the land is still being used and under customary patterns. The necessity of this definition comes about when a conversion is going to occur.

Q That's a necessary preliminary to the final decision as to whether or not this proposed transaction is in the best interests of the native groups that want to enter into it. Is that right?

A Yes, the formal act of recognition and conversion is a preliminary to the sale being possible when the sale is possible and an agreement is reached that the Court has to examine whether ^{it considers} that is a fair and reasonable settlement, and it appears from the literature I've seen that the reactions of judges on the Maori Land Court has been rather different as to what criteria they should apply in judging whether transactions are good or not.

Q Then essentially the decisions are arbitrary.

A Lawyers prefer to call them discretionary, but that's another term for arbitrary sometimes.

D.E. Sanders
Cross-Exam by Steeves

Q I was going to ask you another question. Is it true that you articled as a student in my firm of Russell and Dumoulin?

A That's correct.

Q How is it we have never met before?

A That was in 1963 and 1964.

Q I thought perhaps it was because we were on different floors.

A It appears that you're more junior in that firm than I am.

MR. STEEVES: Thank you, Mr. Commissioner.

MR. BELL: I notice it's past 12:30 now, sir.

THE COMMISSIONER: All right, well thank you very much, Mr. Sanders. All of us, I think, especially the lawyers, have gained a great deal from your testimony. I don't say that facetiously, I say it quite deliberately and I know I have benefited from it. So let me thank you again.

(WITNESS ASIDE)

THE COMMISSIONER: Mr. Bell, yesterday you were putting people up on those panels and then down again so quickly that you dazzled me with your footwork and I never did have a chance to thank Professor Russell and Father Fumoleau for appearing and for their very worthwhile contributions they made to our proceedings, so perhaps you wouldn't mind passing my thanks on to them, in one way or the

D.E. Sanders
Cross-Exam by Steeves

other.

Well, we'll adjourn till
two o'clock then.

(PROCEEDINGS ADJOURNED TO 2 P.M.)

J. S. Saul
In Chief

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

JOHN SHANNON SAUL, sworn:

MR. BELL: Mr. Commissioner,

I'd like to introduce Mr. John Saul who's our next witness.

DIRECT EXAMINATION BY MR. BELL:

Q If I could just take a moment to go through your qualifications Mr. Saul; you are an Associate Professor of Social Science at Atkinson College at York University?

A That's correct.

Q You received a B. A. in 1959 from the University of Toronto an M. A. in 1961 from the University of Toronto, an M.A. in 1963 from Princeton University, and 1964 and 1965 you did specialized post--graduate work on Africa at the University of London.

A That's correct.

Q In 1959 and 1961, you were a teaching assistant in the Department of Political Economy at the University of Toronto.

A Correct.

Q In 1963 and '64, you were a teaching assistant in the Department of Politics at Princeton University.

A Yes, that's right.

Q In 1965 and '66, you were a research associate at the University College, Dar es Salaam in Tanzania.

A That's correct.

J. S. Saul
In Chief

1 Q In 1966 and '67 you were
2 an assistant lecturer in the Department of Political
3 Science and Institute of Public Adminstration at University
4 College, Dar es Salaam in Tanzania.

5 A That's correct.

6 Q In 1967 to '69, you were
7 a lecturer in the Department of Political Science and
8 until July of 1968 in the Institute of Public Administra-
9 tion at the same university.

10 A That's correct.

11 Q In 1970, you became a
12 senior lecturer in that department at that university.

13 A Correct.

14 Q In 1971 and '72 you were
15 a senior lecturer in the Interdisciplinary Program on
16 East African Society and Environment at the University
17 of Dar es Salaam.

18 A Correct.

19 Q From 1973 to the present
20 you've held professorial positions at Atkinson College,
21 York University in the departments of Political Science
22 and Social Science and at the Ontario Institute for
23 Studies in Education and the Department of History and
24 Philosophy.

25 A That's correct.

26 Q You are the recipient of
27 the awards listed.

28 A Yes.

29 Q You are a member of the
30 editorial board of "This Magazine"?

J. S. Saul
In Chief

1 A Correct.

2 Q And a member of the
3 editorial board of the "Review of African Political
4 Economy".

5 A Yes.

6 Q You are also vice-chair-
7 man of the Ontario Regional Board of Oxfam, Canada.

8 A That's correct.

9 Q You are the author of
10 the publications listed on page two of the appendix.

11 A I am.

12 Q Would you please proceed
13 with your evidence sir?

14 A Thank you. I'm glad
15 to get a chance to speak ahead. I'm very proud of my-
16 self for having added an additional day to my stay here
17 on my air fare and I was beginnning to fear that I
18 might have to plead a plane after all, but in fact,
19 I'm not in that kind of hurry. So, Mr. Commissioner,
20 my testimony will discuss certain features of the
21 realities of nation and nationalism in the Third World.
22 No attempt will be made to apply my findings directly
23 to the case of the Dene nation since any such undertaking
24 would fall outside the range of my own knowledge and
25 expertise.

26 Nonetheless, this evidence
27 would not be presented unless I were confident that there
28 are
29 lessons to be learned from a comparative approach which
can help eliminate and legitimate the Dene claim.

30 First section then. There has

J. S. Saul
In Chief

been much debate in the scientific literature about what precisely constitutes a nation. A variety of criteria have been suggested, most prominently the existence of a common history, territory, culture and language. Yet there has been a great variation in the applicability of these criteria to the peoples who have successfully asserted their claim to nationhood in the past 50 years.

This has been particularly true for peoples who have lived until well into this century under colonial or semi-colonial conditions and who have economies both poor and underdeveloped; the peoples of the so-called Third World.

Some such peoples have a centuries old experience of commonality, e.g. China and certain other Asian countries. Some have only very limited common experience arising from their original inclusion as tribes within the arbitrary boundaries established by European colonialism, e.g., most parts of Africa. For the latter, their nationalism is as much a matter of aspiration as it is one of established fact, but this does not make it any less real or important. Indeed, in much of Africa, the very process of asserting nationhood has often been a crucial process in deepening the awareness of the mass of the population concerned, as to their participation in the nation and as to the new opportunities which such participation offers them.

Therefore, the first point suggested by Third World experience is that a semantical

J. S. Saul
In Chief

1 exercise designed to define the essence of a nation or
2 designed to measure any given people against such a
3 criterion is beside the point.

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J.S. Saul
In Chief

A nation is, quite simply,
any group which demands to be treated as such. Of course a common history, territory, culture and/or language are very important, as is a shared experience of oppression and exploitation. These common features can help give focus, meaning and strength to the efforts of the peoples involved. The presence of such attributes can also help to convince outsiders to accept the claim to nationhood which is being made. But in the third world it has been the demand itself which has been of primary importance, and the success of previously subjugated peoples in having their demand accepted. In consequence, what the remainder of this testimony will focus upon is, firstly, the very good reasons why the demand to be treated as a nation has been made by Third World peoples, and secondly, some of the results and implications of that demand having been made.

I begin Section II by quoting a poem recently written by a nationalist poet in Mozambique which obtained its independence last year in 1975 from the Portuguese. I'll read that poem:

"Enough of these massacres

I have suffered for five hundred years

I can bear it no longer

This forced labour.

I suffered on the railways

in the fields of cotton

in the timber mills and on the sisal plantations

J. S. Gaul
In Chief

I can bear it no longer

I can bear it no longer

this was the cry of the people

of those who have suffered

since the first day of the invasion

The people say: Enough."

The period since the Second

World War has seen the dramatic rise of nationalism in the Third World.. The reason is simple. The concept of the nation and the political reality of nationalism have proven to be the most effective tools for resisting continued European hegemony in colonial and semi-colonial areas of the world and for winning independence. Other methods have been tried. When European imperialists first began to arrive in Africa, for example, there ensued in virtually every territory a period of warfare, termed by historians as the period of "primary resistance" on the part of the peoples about to be colonized. After such initial resistance had been crushed by the military might of Europe, the indigenous population was^{either} marginalized or forced into playing a subordinate role within the overarching imperial economy and society. In the words of Amilcar Cabral of Guinea-Bissau (Africa's outstanding nationalist, activist and theoretician, until the time of his assassination by Portuguese agents in 1973), what was happening to the "dominated people" was quite

J.G. Saul
In Chief

simply "the negation of its historical process".

Indigenous populations continued to try various means of regaining a measure of autonomy and independence; for example, there was a pattern of sporadic (and usually much too isolated) acts of resistance --

THE COMMISSIONER: Excuse me.

A Sorry.

Q Just going back, you said the indigenous population was either marginalized or forced into playing a subordinate role within the overarching, etc. I think I know what you mean by "marginalized" but maybe you just better make it explicit.

A What I was thinking of there was the difference between people who are pushed to the margin of society, crowded into reserves, etc., as opposed to people who were subjected to forced labor, forced agriculture to service in a productive way the economy, and there tended to be a variation in the Third World as to what role was defined for people in that sense. Does that get at it?

Q Yes. In other words, if you had to apply one of those terms to the native people in Canada, you would say they were marginalized, is that it?

A I would -- again not claiming any particular expertise in that area, that would seem to be more the pattern say than with the case of the African population in most of Africa where they were constrained to enter the economy in a

J.S. Saul
In Chief

1 subordinate but productive manner, in a different way.
2 Now I think in the fur trade period, again speaking as
3 a layman on these matters, you do get a different
4 role for the native people, but possibly in a later
5 stage there may be other witnesses who will bear this
6 out. You get a slightly different role that they are
7 consigned to.

8 Q Right, fine.

9 A Let me pick up now --
10 and there were attempts at assimilation, with the
11 consequent (but limited) advancement of a few indigenes
12 within the alien system. Yet isolated acts of resistance
13 proved futile and assimilation failed in any significant
14 way to alter the broader structures of exploitation and
15 oppression which the population as a whole faced in
16 each territory. It also denied too much of the past
17 of the peoples concerned to be acceptable to them. In
18 the twilight years of colonialism, Third World peoples
19 were showing themselves prepared to build for the
20 future in "modern ways," but only in terms recognizable
21 to them and which they defined for themselves. To a
22 new generation of leaders -- and ultimately for the
23 broader population as well -- the nation seemed to pro-
24 vide a framework, large enough and focused enough
25 within which they could finally realize their
26 goals. As Cabral put the point in the essay already
27 cited,

28 (QUALIFICATIONS & EVIDENCE OF J.S. SAUL
29 MARKED EXHIBIT 570)

J. S. Saul
In Chief

"national liberation is the phenomenon in which a given socio-economic whole rejects the negation of its historical process. In other words, the national liberation of a people is the regaining of the historical personality of that people, its return to history through the destruction of the imperialist domination to which it was subjected."

Of course, the choice of the nation by Third World peoples as a primary instrument in their drive for liberation and self-realization was partly a result of the way in which the outside world was structured. Even where the nation as such was a relatively alien European concept, its construction seemed a necessary achievement in order to deal effectively with the generally hostile and aggressive external environment. An environment which was, of course, organized into nations. As Basil Davidson, one of the most sensitive contemporary writers on African history has observed, this lesson began to be learned by some quite early in the colonial epoch:

"Become nations or you cannot become free. In some such imperative as this the European message reached African ears, decade after decade through a multitude of more or less skeptical exhortations. A people without history and a people without history could have no identity and therefore, no real claim on that dignity and self-respect which even the poorest European peoples had successfully acquired for themselves. The lesson was to be well learned."

J. S. Saul
In Chief

1 In this way, the achievement of national status was
2 seen to have become in a world of nations a sine qua non
3 for having one's grievances and aspirations taken
4 seriously.

5 The decision to act on this
6 latter assumption has proven to be quite correct tactical-
7 ly, of that there can be little doubt. Nonetheless,
8 there has been a great deal more to Third World national-
9 ism than merely tactical considerations. As
10 Davidson goes on to affirm for the African situation:

11 "The case is clear, nationalism in Africa today is
12 primarily a claim for equality of status and of
13 rights; for personal dignity, self-respect, full
14 participation in the things of the material world
15 as well as in the things of the spirit. A consistent
16 effort to rescue Africans from their condition of
17 acquired inferiority to which they have been
18 relegated through the years and this is everywhere
19 true."

20 This quotation is a useful
21 evocation of the positive attributes of successful
22 nationalism. It touches on the three spheres in which
23 the promise of nationalism is making a substantive
24 contribution to the betterment of Third World peoples
25 can be seen to lie: the political, the cultural and
26 the economic.

27 The potential political contri-
28 bution of nationalism is the most obvious. A successful
29 nationalism generally means the establishment of a
30 political entity with a significant new degree of self-

J. S. Saul
In Chief

1 determination. Can there be any disagreement with the
2 argument that self-determination is better than subjugation
3 to imperial dictate for the peoples of formerly
4 colonial or semi-colonial countries? The assertion of
5 the demand for independence may also have the effect of
6 releasing the creative energies of increasing numbers of
7 people in the nation concerned. To be sure, this has
8 not always happened, but the independent nation has
9 provided at least the potential forum for increasing
10 democratization which by definition, a continued
11 imperial framework could never provide.

12 Moreover, even the very
13 political process involved in staking the new nation's
14 claim to recognition has tended to have a profoundly
15 democratizing effect, as many new people are drawn for
16 the first time into active involvement in shaping their
17 own destinies.

18 This is something which I
19 witnessed for myself when I visited the liberated areas
20 of Mozambique in 1972 during that country's struggle
21 for freedom against the Portuguese colonial power.
22 There too, I witnessed the manner in which nationhood
23 can also help transcend the most parochial of tribal
24 loyalties, the latter often focusing attention on units
25 too isolated and narrowly traditional to facilitate a
26 fully effective political mobilization against the
27 external agents of oppression.

28 The cultural contribution of
29 nationalism can also be great, just as the need for some
30 such contribution is itself overwhelming. The cultural and

J. S. Saul
In Chief

pyschic depredations of conquest and imperial control have been well documented by writers like Cesaire, Memmi, James, Cabral and Fanon; those who have themselves sprung from a colonial background and who have been able to reflect profoundly upon such themes. Significantly, the outstanding African nationalist leader, Samora Machel, echoed precisely these writers' themes in a speech presented on the occasion of his inauguration as President of the New People's Republic of Mozambique in June 1975 (Mozambique having become independent after more than ten years of struggle against Portuguese colonialism):

"It was in order to keep our people subjected to its domination that colonialism tried -- in some cases, particularly in the urban areas with some success to destroy our personality, sow division, and create a slave mentality toward the foreigner.

Assimilation was not merely the fascist caprice of a senile dictator (Salazar) but was in fact mental enslavement to the foreigner in its purest form, a deliberate process of negating all the culture, history and traditions of our people. A man thus spiritually destroyed became a living corpse, a docile receptacle for the colonizers' way of thinking, acting and living. This is the heritage we are reaping today."

With "our traditions humiliated, our civilization negated", a situation was created in which and this is Samora Machel speaking again:

"Alcoholism was made widespread and prostitution

J. S. Saul
In Chief

and the disintegration of the family --"
and the like. Terrible problems, but ones with which
a free Mozambique can now at least begin to deal.

The practical response of
Samora Machel and his colleagues in Mozambique to many
of these problems has been the same as that suggested
by Frantz Fanon in his well known book, "The Wretched
of the Earth": to provide the stimulus for the rebirth of
a national culture. Such a culture could hope to blend
the best and most relevant of traditional values with
the concern for contemporary reality and contemporary
problems. In fact, just such a humane blend as is
rejected by definition by the architects of assimilation.

As Fanon enjoined his fellow
Third World intellectuals, tempted by individual rewards
attendant upon their assimilation:

"We must work and fight with the same rhythm as
as the people to construct the future and to
prepare the ground where vigorous shoots are already
springing up. A national culture is not a folklore
nor an abstract populism that believes it can
discover the people's true nature. A national
culture is the whole body of efforts made by a
people in a sphere of thought to describe, justify
and praise the actions through which that people
has created itself and keeps itself in existence.
A national culture in underdeveloped countries
should therefore take its place at the very heart
of the struggle for freedom which these countries
are carrying on."

J. S. Saul
In Chief

Nor is the evocation of such a possibility in any way a speculative one. Among the most extraordinary things which I witnessed for myself in revisiting Mozambique in June 1975 for that country's independence celebrations was the extraordinary display of creative energies released in the cultural sphere. In all sectors of the population and literally in all the art forms which one could imagine, by the fact of freedom.

For a previously defeated and disoriented people, the pride of accomplishment and sense of possibility which a successful nationalism engenders has often been such as to set them again on the road to significant accomplishment in every sphere.

What finally of the economic contribution of nationalism? Julius Nyerere, President of Tanzania and one of the most innovative of Africa's post-war nationalists has put one important point clearly in his essay "Economic Nationalism":

"Surely if it is reasonable or understandable that Britain, Canada and France should protect their strong economies against domination by the even stronger American economy, it is also reasonable that Africa should be concerned about these matters. The fact that our national economies are weak does not alter things. On the contrary, the fact that we are underdeveloped makes such industry as does exist the more vital to our future. It becomes more essential not less, that our major means of production should be under the control of the people and that the people's representatives should

J. S. Saul
In Chief

determine the policies followed.

As I have said, this economic nationalism has nothing to do with the ideologies of socialism, capitalism or communism. It is universal among nation states. The time and the method of securing such control where it does not already exist will vary, but it would be absurd to expect the people -- to expect Africa to accept that the well-being of its people should be indefinitely controlled from outside. Whatever economic system the peoples of different African countries eventually adopt, it is quite certain that sooner or later, they will demand that the key positions of their economy are in the hands of their own citizens."

Nor is this merely a question of control for its own sake. The argument must be placed in the context of a virtual flood of recent studies of the political economy of dependency which have proven, at least to my satisfaction that the unalloyed economic impact of advanced capitalist economies upon the economically backward parts of the world has had and continues to have disastrous consequences..

Quite simply, there is no invisible hand which dictates equitable distribution and evenness of development in the world economy. The evidence is incontrovertable. Them as has, those at the center of the system who are rich and capital, technology and power, them as has, gets. It is perfectly true that in such an unbalanced world, not all of the new nation states, perhaps not even the

J. S. Saul
In Chief

1 majority have managed to defend their people against
2 the kind of economic polarization between center and
3 periphery, metropole and hinterland which characterizes
4 empirically the functioning of capitalism on a world
5 scale.

6 Obviously, under such
7 circumstances, national control only makes a contribu-
8 tion if it goes beyond being merely formal and nominal.
9 Nonetheless, what is equally clear is that without a
10 national focus and a national presence Third World
11 peoples would be entirely defenseless against imperial
12 dictate and subordination, as defenseless as they were
13 under colonialism. Crystallization of a nation has
14 proven to be a necessary though not sufficient condition
15 for economic development in the modern world.

16 Section three then. This
17 last point warrants further discussion. As a growing
18 of
19 body writers have argued in recent years a nationalist
20 assertion can also manifest some severe weaknesses
21 when measured against what is actually necessary in
22 order to deal with the problem of underdevelopment.
23 Thus, the most eloquent chapter in the book by Frantz
24 Fanon cited above, one which precedes his stirring
25 chapter on the virtues of national culture, which
26 I cited earlier, is entitled precisely, "The Pitfalls
27 of National Consciousness". Here, Fanon points out
28 very clearly that many nationalisms have been unduly
29 preoccupied with merely the winning of formal political
30 independence and that such a narrow preoccupation can
have a number of negative consequences.

J. S. Saul
In Chief

It can, for example, give such an appearance of achievement that other pressing questions concerning cultural integrity and indigenous economic control will tend to be overlooked. Indeed, President Nyerere of Tanzania has gone so far as to argue that:

"It is comparatively easy to get independence from a colonial power especially one which claims to base its national morality on the principles of freedom and democracy. Everyone wants to be free and the task of a nationalist is simply to rouse the people to a confidence in their own power of protest."

But to build real freedom, in Nyerere's terms is quite a different matter and Nyerere observes that unless the goals of the nationalist movement are broadened and deepened:

--the anti-colonial struggle will almost certainly have intensified the difficulties of realizing such "real freedom".

Related to this, nationalism leading to "independence" has often had the concrete result in the Third World of bringing into the formal positions of power and authority indigenous elites who remain culturally and economically identified with the status quo and the imperial system. Such a "false decolonization" can involve merely an Africanization or Asianization or the like of the prevailing local power structure, with little alteration in the lot or prospects of the ordinary people of the society flowing from such an apparent transformation.

J. S. Saul
In Chief

1 It is not surprising that in
2 1967, Nyerere:

3 " Warned that the people should not allow their
4 freedom to be pawned as most of the leaders were
5 purchasable.

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J.S. Saul
In Chief

He warned further that in running the affairs of the nation the people should not look on their leaders as saints or prophets. The President stated that the attainment of freedom in many cases resulted merely in the change of colors, white to black faces without ending exploitation and injustices, and above all without the betterment of the masses."

THE COMMISSIONER: Excuse me. Where does that quote from President Nyerere end? It begins on the top line "warned".

A Yes, right down to the closing of the quote, it's all his quote. It's a quote from a newspaper.

Q Oh, down to "the masses".

A That's right.

It's a newspaper account of a speech that he gave in 1967.

Fanon, in emphasizing a parallel dimension of this reality, has been equally eloquent:

"The national middle class discovers its historic mission: that of intermediary. Seen through its eyes, its mission has nothing to do with transforming the nation; it consists prosaically of being the transmission line between the nation and a capitalism, rampant though camouflaged, which today puts on the masque of neo-colonialism.

The economic channels of the young state

J.S. Saul
In Chief

sink back inevitably into neo-colonialist lines. The national economy ... is literally controlled. The budget is balanced through loans and gifts, while every three or four months the chief ministers themselves or else their governmental delegations come to the erstwhile mother countries or elsewhere, fishing for capital."

In short, newly independent nations which have been structured on this kind of basis have become the prey both to stronger economic centres and to the aggrandizement of indigenous elites. On the one hand this has meant a leadership much more closely aligned with its international partners than with its own people, and in consequence an increasingly authoritarian direction for many new nations. On the other hand, as hinted above, it has meant that multi-national corporations which dominate the international economy have had great success in bending such nations and in particular such elites, to their will. And the results have been predictable. We might cite here another source to reinforce the picture sketched in the previous section. Thus a series of articles in so unradical a forum as "The New Yorker" (and subsequently published as the widely read book "Global Reach" by Richard Barnet and Muller) noted unequivocally that:

"The negative impact of global corporations on living standards, employment rates and economic justice has occurred despite the fact that many corporate officials would like it to

J.S. Saul
In Chief

1 be otherwise and believe that it can be.

2 The unfortunate role of the multinational
3 business in maintaining and increasing
4 worldwide poverty results primarily from
5 the dismal reality that global corporations
6 and poor countries have different -- indeed,
7 conflicting -- interests, priorities and
8 needs. The primary interest of the corporation
9 is profit maximization, and this means that it
10 is often advantageous for the balance sheet if
11 income is diverted from poor countries. Eager
12 as they are to be good corporate citizens, the
13 managers owe their primary allegiance to
14 company shareholders. Their businesses, they
15 like to say, are neither charities nor welfare
16 organizations, although some do devote modest
17 resources to good works. The claims of the
18 global corporations rest instead on the theory
19 of the market place which says in effect that
20 by enriching themselves, they enrich the whole
21 world. This, unfortunately, has not been the
22 reality."

23 The new nation seriously
24 interested in development must be one which can
25 articulate firmly its different "interests, priorities
26 and needs" and make them stick.

27 It becomes clear then that
28 possession of formal political independence by a
29 people is no guarantee of economic progress. This is
30 why the more sophisticated and dedicated nationalists

J.S. Saul
In Chief

in the Third World and writers and actors like Fanon and Nyerere remain committed to the goal of nationhood in Africa and elsewhere, whatever their criticisms of established practice,^{why they} have begun to lay more and more stress on cultural and economic dimensions of the struggle and on the need for internal democratization. I revert once again to my own experience with the nationalist movement in Mozambique. Precisely this kind of emphasis has enabled Marcelino dos Santos, Vice-President of that country, to distinguish what he terms "primitive nationalism" from the much more relevant and radical kind of nationalism which has gradually taken shape in his country and which has begun to face up to the broader kinds of challenges we have been discussing. To be sure, such nationalists as dos Santos have also sought a very high degree of political autonomy. Nonetheless the point stands out that the formalities of such independence are increasingly seen to be much less important than the actual substance of autonomy, control and self-realization.

And the conclusions. As noted at the outset, an attempt to apply the lessons of Third World experience in any kind of systematic way to the case of the Dene would involve a great deal of speculation on my part. In conclusion I would merely advance the following observations:

1. The apparent coherence, in terms of history, territory and culture, of the Dene as a nation is important but in any case merely strengthens a claim by the native people to guarantee their self-defence via

J.S. Saul
In Chief

nationhood which is solid on other grounds.

2. These other grounds are immediately evident from a comparative analysis of Third World nationalism. This analysis suggests that for people like the Dene who have been defeated and colonized, the claim to nationhood has been a necessary, though not sufficient condition to their reclaiming the political, cultural and economic autonomy which they require in order to achieve development.

3. In light of Third World experience of the weaknesses as well as the strength of nationalism, the refusal of the Dene to fetishize formal independence or "separatism" (as some hostile critics have attempted to portray their position) and instead to concentrate their attention upon the winning (and institutionalizing) of sufficient autonomy to guarantee cultural integrity, economic power and the basis for the genuinely democratic control over their own lives by the peoples concerned is completely logical and fully justified.

Thank you.

MR. BELL: A copy of Mr. Saul's summary and appendices thereto has been filed as an exhibit. Mr. Saul is now available for cross-examination.

MR. SCOTT: Mr. Sigler, I think Mr. Bayly isn't here. Have you any questions?

MR. SIGLER: No questions, sir.

MR. SCOTT: Mr. Hollingworth?

MR. HOLLINGWORTH: No questions.

J.S. Saul
In Chief
Cross-Exam by Commissioner

MR. SCOTT: Mr. Steeves?

MR. STEEVES: I have no questions.

MR. SCOTT: And I have none,
thank you.

THE COMMISSIONER: Well, thank you very much, Mr. Saul. I certainly appreciate your coming and presenting your paper, and we will all be reflecting upon it and thinking about it over the next week or so. Thank you, sir.

Oh, by the way, Professor Saul, just before you go, maybe you could just spare a moment for me. I had one or two questions.

Q This -- many of these countries in Africa which is your own particular area of expertise, it appears to someone like myself who reads about these countries in magazines and so forth, that the majority of people by far live entirely outside the industrial system. For instance, if you take a country like Zaire, I read recently somewhere that they were in economic difficulty and the budget wasn't balancing and so forth and so on, and they were going to the World Bank for a loan. Well, would that make any difference one way or the other to the millions of people in Zaire who don't live in Leopoldville or Kinshasa -- is that the same place?

A Same place.

Q It's something that affects the president and his entourage and a fairly limited middle class established in, I suppose, the only urban centre in the country. But to the majority

1 of the people living out presumably in villages and
2 in the bush would it make any difference at all
3 if the country went bankrupt?

4 A In Zaire the social
5 structure is such that it probably wouldn't make any
6 great difference because in some senses it would
7 vary from region to region and it is a vast country
8 and there are areas, for example mining areas in the
9 south where there is migrant labor to those mines,
10 etc. It's also the case that even though say in
11 many of these countries 95% of the population is in
12 the rural areas, nonetheless insofar as they have
13 cash incomes, they come from the production of
14 primary products that are sold in one way or another
15 through the system. Now because they are close to sub-
16 sistance in many cases, even if they are involved in
17 the cash economy to some extent, they can fall back
18 on subsistence. It means of course that the quality of
19 their life doesn't improve and if there is population
20 pressure on the land it may go backwards. But it is
21 true in a country like Zaire where you have, I think,
22 it's fair to say, quite an exploitative elite, that
23 the World Bank money primarily goes to service their
24 interests.

25 Now there would be other
26 countries where the situation would be different. I
27 don't want to get into the merits and demerits of the
28 World Bank. That's a controversy in itself, but say
29 aid from some particular source, in a country like
Tanzania where there has been an attempt to

J.S. Saul
Cross-Exam by Commi ssioner

transform the quality of life in the rural areas in a much more serious way, than where in Mozambique where one of the first tasks that the new leadership set themselves to try and transform rural life and to develop a political system that doesn't stand in the way of that kind of policy by skimming off surpluses for the elite, etc., then a certain amount of money of that sort might help and the problems that the economy might be having because of ^{fall of} prices, etc., would have a negative effect on the prospects of those people because there would be programs entrained, designed to in fact further liberate them. So it depends a great deal again, comparing Zaire with Tanzania , with Mozambique is really comparing apples and oranges even though they are both in Africa because the structure of the kind of nation that they are, the kind of economic structure they are building are so entirely different.

Q Well, let me -- in the "New York Review of Book ", it's a periodical and I think I've got the right name not the "New York Times," the "New York Review of Books", there was a series of articles last winter by a man named Geoffrey Barraclough. I don't know if that means anything to you, but he had a theory that was very interesting. He said there were people in these Third World countries that had, upon achieving independence, asserting their national -- asserting their nationhood in that, in the strictly political sense, had then embarked on seeking to emulate the west.

J.S. Saul
Cross-Exam by Commissioner

1 A M-hm.

2 Q That is they had gone
3 in for cash crops they could export and so on and
4 so forth, coffee and cocoa , things of this sort,
5 and that they had neglected their own agriculture,
6 their own self-sufficiency. They had sought to emulate
7 not only the west, but the Communist countries as well
8 by building up industry and even heavy industry and
9 so forth, seeking to reproduce in Africa, New York and
10 Moscow, presumably. His theory was that they had
11 made a mess of it in that with crop failures and one
12 thing and another, and the increase in the price of
13 foodstuffs of various kinds on the market and the
14 dropping of the prices they were getting for some of
15 their cash crops, that they were in many cases facing
16 very difficult times. Is that a -- I know you can't
17 apply this to everybody. My impression was that that
18 was a mode of development in many of these new
19 African nations that sought to pursue and that Nyerere
20 for instance was one who had declined to proceed along
21 that mode, and instead opted for agricultural self-
22 sufficiency without pursuing industrialism. I'm sure
23 this is all put in terms that you would reject from a
24 first year student, but--

25

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J.S. Saul
Cross-Exam by Commissioner

A I think the important point to make, though, is it is not that this is something that these countries have set themselves up to do from a standing start. I think the crucial point, and I suppose this is where the discussion of, we come back to the discussion of the pipeline in effect, is that these economies were structured over the years of colonialism with precisely those kind of biases. The new leadership didn't inherit an economy that was completely untouched. It inherited one in which the bias of the economy was precisely towards exporting already those crops. In Mozambique, for example, one of the things that the liberation movement set itself against from the early '60s was precisely the investment of capital by the Portuguese into this huge hydro-electric project at Cabora Bassa which they said doesn't service our needs. One of the reasons we have to win independence fast is to stop them from sinking so much capital into that project, which we would like to have a say in. in fact We might decide that we are skeptical and might decide that's something we don't want to spend our money on or see our land, in this case Tete Province, which I visited in Northern Mozambique, turned over to this kind of project involving a shift of population, the flooding of land, etc. I think the major point is that these new nations have of course inherited a history which has been mainly one of warping their societies to service precisely those kinds of needs that express themselves in cash crop production, etc., deepening that kind of process, which seems in

J.S. Saul
Cross-Exam by Commissioner

run
1 short' the easiest thing to do, just do more and better;
2 but in fact as Nyerere and others have said, a self-
3 defeating kind of process. This is again why I emphasize
4 the expectations of the elite, etc., the extent to
5 has which the colonial powers' had a cultural and other
6 kind of impact, because the elites often do define
7 progress in western terms which I think economists
8 even are coming to agree are not necessarily the
9 most appropriate ones.

10 Q The national air lines
11 and that sort of thing.

12 A This sort of thing, you
13 see, and that a more self-reliant -- and this is the
14 emphasis in your area, or Samora Machel
15 are attempting now to develop, a more self-reliant
16 growth that in the first instance builds upon the
17 subsistence capacity of the existing society so you
18 don't get into this food shortfall situation, and then
19 it goes on from there, that having made sure you're
20 developing an economy that makes sense internally, there
21 are linkages that keep that economy on an even plain
22 can
23 then you begin to think of further development projects.
24 But the external stimuli, if you just allow yourself
25 to submit to the external stimuli that have been created
26 over several centuries, you're reinforcing the kind of
27 were negative situation that you under during the colonial
28 period. This is quite crucial and it's for that reason
29 that people like Nyerere and Fanon question the exclusive
30 raising of the question of political independence, formal
31 institutions of politics. Independence is really about

J.S. Saul
Cross-Exam by Commissioner

1 creating a self-reliant economy that may insist upon
2 or request inputs of capital, etc., from various
3 sources, private and public, but will do it on terms that
4 make sense to it in terms of a long-term strategy of
5 retaining a kind of internally logical dynamic that
6 fits into relationship with prevailing cultural patterns
7 and changes then as time and circumstance permits; but
8 also gets out from under this economic weight of the
9 colonial pattern. I think that's the major single
10 variable; is that kind of history that repeats itself,
11 unless the new nation is prepared to raise a set of
12 fundamental questions beyond the question of mere
13 independence. It's a theme that comes out of
14 My erere's writings, the Morris writings, etc., and
15 a very crucial one, I think. There's no doubt that
16 most countries in the Third World attended under the
17 blandishments, of course, of the World Bank, etc.,
18 because it is these institutions that tend to present
19 the option of further cash crop production, and the
20 World Bank is not notorious for being interested in
21 self-reliance. They are much more interested in
22 developing economies that continue to service that
23 historical role in a more subtle way. But as I say,
24 that's a somewhat different debate.

25 Q Right.

26 A But I think the point
27 is, where that kind of development has been questioned,
28 you get a kind of nationalism that begins to deal over
29 a broad front, with all of the dimensions of dependency
30 and colonialism that have been geared into these

J.S. Saul
Cross-Exam by Commissioner

societies over the many years of their subordination.

Q You said that on page 9, the third paragraph, you say that:

"It is perfectly true that in such an unbalanced world not all of the new nation states, perhaps not even the majority, have managed to defend their people against the kind of economic polarization between centre and periphery, metropole and hinterland which characterizes empirically the function of capitalism on a world scale."

Are those expressions, which we've heard from time to time at the Inquiry, the question of the metropolis and the hinterland, are those now terms of art in economics or sociological studies, or are they words that should be understood in the way that most of us in this room understand them?

A Well, I think they have become words that are used by people who would say they were making scientific analyses, but the use, I think, would also remain somewhat close to the common-sense use as well in that sense. There are people who have done quite careful analyses which attempted to give those words a very concrete and substantive meaning, I think successfully, so that they are not merely metaphorical terms but ones that do relate to, you know, do evoke a reality and I think, you know, probably people on the whole, the words do evoke themselves even in a common sensical way, that reality.

THE COMMISSIONER: Well, thank

J.S. Saul
Cross-Exam by Commissioner

1 you. Sorry I didn't mean, when I mentioned the "New
2 York Review of Books" I wasn't preening myself now.
3 I just wanted to make sure I had the name of that
4 periodical right and I always confuse it myself with --

5 A I think that's the one,
6 I remember those articles.

7 THE COMMISSIONER: Well, thank
8 you very much, sir.

9 A Thank you.

10 (WITNESS ASIDE)

11 MR. BELL: That concludes our
12 second panel, sir. Perhaps we could have a five-
13 minute break to set up for the third.

14 THE COMMISSIONER: O.K.

1 (PROCEEDINGS ADJOURNED FOR A FEW MINUTES)

Bean, Barnaby, Kurszewski,
Cheezie
In Chief

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

THE COMMISSIONER: All right
ladies and gentlemen, let's come to order.

4 WILF BEAN
5 GEORGE BARNABY, resumed
6 GEORGE KURSZEWSKI
7 GERRY CHEEZIE, sworn

MR. BELL: I'd like to introduce
our third panel to you Mr. Commissioner. Starting at
the right is Mr. George Barnaby. Beside him is Mr.
Gerry Cheezie and beside him is Mr. George Kurszewski
and Mr. Wilf Bean on the left end.

DIRECT EXAMINATION BY MR. BELL:

Q Mr. Barnaby, you are a
hunter and trapper and a resident of Fort Good Hope.

WITNESS BARNABY: Right.

Q You've been a hunter and
trapper for many years, I understand.

A Yes.

Q In 1970 and '71 you were
the co-op manager at Colville Lake?

A Yes.

Q In 1972 to '74, you were
a settlement secretary at Fort Good Hope.

A Yes.

Q From March 1975 to March
1976, you were a member of the Council of the Northwest
Territories?

A That's right.

Q Mr. Cheezie, you are the
chief of the Fort Smith and Fitz Indian band?

Bean, Barnaby,
Kurszewski, Cheezie
In Chief

1 Mr. Kurszewski, you are the President of the Fitz-Smith
2 Metis community?

3
4 WITNESS KURSZEWSKI: That's
right.

5 Q I understand that until
6 recently, that was known as the Fort Smith local of
7 the Metis Association.

8 A That's true.

9 Q Mr. Bean, you are at
10 present a band development consultant for the Indian
11 Brotherhood of the Northwest Territories?

12 WITNESS BEAN:

13 A Yes.

14 Q You obtained a Bachelor
15 of Arts in 1967 from the University of Waterloo? In
16 1970 and '71 you undertook graduate studies at Memorial
17 University in St. John's, Newfoundland specializing in
18 sociology and the anthropology of Northern Canada.
19 In 1971 you were doing research in Fort Simpson.

20 In 1968, you were the Acting
21 Area Administrator of the Department of Indian and Northern
22 -- Indian Affairs and Northern Development at Cambridge
23 Bay in the Northwest Territories?

24 A Yes.

25 Q In 1969 and '70 you were
26 area administrator at large for the Government of the
27 Northwest Territories, Fort Smith region.

A Yes.

Q In 1971 and '73,
you were Settlement Manager, Government of the Northwest
Territories at Coppermine, Northwest Territories?

2
3 Bean, Barnaby,
4 Kurszewski, Cheezie
5 In Chief

6 A Yes.

7 Q From 1973 to 1975, you
8 were a Regional Development Officer of the Department
9 of Local Government of the Government of the Northwest
10 Territories, Inuvik Region?

11 A Yes.

12 Q From June of 1975 to the
13 present, you've held your present position?

14 A Yes.

15 Q I'd like to call on Mr.
16 Barnaby to speak first.

17 (QUALIFICATION AND EVIDENCE OF GEORGE BARNABY
18 MARKED EXHIBIT #571)

19 WITNESS BARNABY: Thank you.

20 Mr. Commissioner. Land claims of the Dene is a claim
21 not only for land but also for political rights. Up
22 to this time, the native people have had no say in what's
23 happening on their land. Everything has been decided
24 by Ottawa or a few people in Yellowknife.

25 This does not apply to develop-
26 ment on the land only but also in the way we live.
27 Laws are made by people from the south that do not make
28 sense to us, but which we have to live by. These laws
29 are to serve the system of the south. They are not laws
30 to protect the Dene way of life.

31 The land claim is our fight
32 to gain recognition as a different group of people
33 with our own way of seeing things, our own values, our
34 own lifestyle, our own laws. The land claims is a
35 fight for self-determination using our own system with

Bean, Barnaby,
Kurszewski, Cheezie
In Chief

which we have survived till now. This system is based on community life whether it be a settlement or a trapping camp, whether people live by working in a wage economy or off the land. The laws we follow are concerned with all the people, not to benefit the few at the expense of the rest.

Sharing with others is one of our laws. People are expected to share. The ones that have a lot always share with the rest of the people. A person will never have to go hungry for instance as other people will give what they could spare. A person who could afford an outboard motor or skidoo helps someone who needs help to move out in the bush.

Respect for the old people is another law, since all the laws come from the teaching by our elders, from stories that give us pride in our culture, from training since we are young we learn what is expected of us. Without this learning from the elders, our culture will be destroyed.

The way decisions are made is another law. No one can decide for another person. Everyone is involved in a discussion and a discussion made by everyone. Decision made by everyone. Our way is to try and give freedom to a person as he knows what he wants. When working for instance, a person should not be forced into anything. Supposing he wants to go trapping for a while. The system should be flexible enough to allow this. There should be a choice.

Our life is part of the land. We live on the land and are satisfied with what we get

Bean, Barnaby,
Kurszewski, Cheezie
In Chief

from it. No one person owns the land. It belongs to all of us. We choose where we want to go and our choice is respected by others whether in the settlement or in the bush. We have no word in our language that means "wilderness", as anywhere we go is our home. It does not make sense to destroy your home.

People love to live in the bush and it is a part of our culture. These are a few examples of the culture of the Dene: the system of government, the laws, the way we differ from the southern system and people.

The Territorial Council is one place where Dene law is not respected at all. There is very little involvement by the people. The laws that are passed have no importance for the people, but they are forced to follow these laws. The whole system is from the south and they are trying to fit us into it.

A lot of times, the topics that are being discussed are not understood by all the councillors. The effects of passing laws are not understood. The language that is used is not understood. The procedures and formality is confusing. Most of the time, rather than look stupid, we just agree. As most of these discussions concern only the southerners. If they choose to live that way, it's up to them I think.

The first session I went to, we spent two weeks on ordinances that had no importance to the people I represent. At this time, I asked for more control for the communities. This was voted down. I don't know why. Since the Territories is a big land

Bean, Barnaby,
Kurszewski, Cheezie
In Chief

and people want different things in different places,
one thing it might have done was reduce the size of the
Territorial Government as people would do more of the
planning and carrying out of programs for themselves.

But even if all agreed the final decision is up to the Commissioner or the Department of Indian and Northern Affairs. At the second session of Council, we talked of political development where the Council would have authority over the whole north. I spoke against this as it made no difference to the people who controlled it. It still would not give them any right to decide for themselves. The power would be only to the Council to decide the future of the north and people would be forced to follow whether they agreed or not.

I believe it was a plan to keep the people oppressed. We would get a land claim but live under the laws of someone who has no concern for us or our wishes or our own laws. In January of this year, we went through the budget for the Territorial Government. This budget was prepared by the Territorial Government and approved in Ottawa. You could not change any money from program to another. All we could do was take it or leave it. We approved everything.

At this time, two motions were made regarding the pipeline. The first was the Pipeline Authority. That the Council should have input into this body. I argued at this time that the people concerned should have the control if there was to any be authority since they would be affected the most.

Bean, Barnaby
Kurszewski, Cheezie
In Chief

1 This was brushed aside with a remark that no group should
2 control the pipeline.

3 So if the concern was not for
4 the people of the north, I don't know what it was.
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Bean, Kurszewski, Cheezie, Barnaby
In Chief

Second was the Council

support of building of the pipeline down the Mackenzie Valley. Here was a real example of oppression, since the people had already stated their position about this project, the council was not speaking for them. What they wanted to do was put down a stand against the pipeline. I don't know what the people from the Eastern Arctic were thinking of when they voted in support, as they have no idea what is happening here. I would think as native people they would share the same concerns for people that we do. What I said was that if they wanted a pipeline, they could approve it on ~~in~~ their own land, but not to force it on us. But hopefully they did not understand the whole issue and what it means to us.

At this time there were remarks made about this Inquiry that would make it look foolish, but I believe this is the first chance that people have had to really speak their minds. Apparently the Council does not want that, they don't want anyone speaking for themselves. They want to decide everything.

Sometimes I say that if the Commissioner and top executives were all trappers and hunters, things would be different. But I see it would make no difference, as it is the system under which it runs, where only a few people decide for the rest of the population, it oppresses people.

Some people might think of the land claims as a racial issue but it really is an

Bean, Kurszewski, Cheezie, Barnaby
In Chief

issue between the ruled and the rulers, between the oppressed and the oppressors. Under Dene law there is freedom and equality. The system from the south is oppression and exploitation, where a few have a lot and a lot of people have very little. Where the Dene work together in time of need, the southern way is to exploit that need. Where the Dene share, only profit moves people in the southern system. Where the Dene law gives freedom for the individual to do what he decides and take responsibility for his action, the system from the south passes an ordinance which forces a person's action and takes away responsibility. Where our system is set up to serve the people, the people from the south serve their system.

The Dene Declaration clearly states that we are a nation of people with our own ways of governing ourselves, we have our own values and lifestyle, and the land claims is our fight to survive as a nation and to decide our own future. Thank you.

Q Mr. Kurszewski, I believe you're next.

WITNESS KURSZEWSKI: The land claims that the Dene of the Northwest Territories are making is not just a claim for recognition of Dene aboriginal title to the land, but also a claim for recognition of political rights that are now being ignored by the Federal and Territorial Governments. To illustrate the political genocide that is happening in the north today, and to give you a better idea of what we mean by the phrase, "imposed political structures"

Bean, Kurszewski, Cheezie, Barnaby
In Chief

versus the Dene community structure, we're going to use Fort Smith as an example. Fort Smith is a community that we're familiar with and a community where we have tried to work within the system. We want to describe the experience we've had and the conclusions which the experience leads us to, in relation to the imposed political structure and the Dene community structure.

Fort Smith is a community, the southernmost community in the Northwest Territories, situated about half a mile above the Alberta border. It's made up of approximately 2,800 people. Approximately 1,600 of them are Dene and 1,200 are white people. This gives us approximately a 60% native majority. The governing body that has been set up in Fort Smith to make local decisions was created not by the people of Fort Smith but by the Territorial Government, through its municipal ordinance. It has been designed particularly for the population of Fort Smith that have moved from Southern Canada to Fort Smith. It's designed in a way that these people from Southern Canada can get into the Municipal Council and take part in it much more readily than the native population can. As we see the Municipal Council, the political structure that is set up, it pretends to represent the community but literally does not represent the community. It's made along the lines of southern thinking. This type of political structure, would fit well into a southern community where people give the power to decide what happens to their community to eight or nine people. This is what the people from

Bean, Kurszewski, Cheezie, Barnaby
In Chief

the south are familiar with, so the minority of the population is familiar with this type of structure. However, the majority of the population is not familiar with this type of structure and does not agree on the whole concept that the structure is based on.

The native majority do not believe that eight or nine people should decide the future of the community. They believe that the future of the community should be decided by the community, by the long-term residents who are the native people, and the white people who have decided that they want to make Fort Smith their home, and have an interest in the community other than monetary.

We would like to outline some experiences we've had with the present political structure. The best example we can give is an example of the Municipal Council elections that were held last December 8th in Fort Smith, when the native people tried to become part of the governmental system there. The council is made ^{up} of eight councillors and one mayor. Four of these positions were open on December 8th. Six native people ran for these positions and five white people ran. There were 11 contenders for the four councillor positions, and when the outcome of the elections were reached, three white people were elected to the council and one native person. Even though the native people of Fort Smith make up a 60% majority of the population, they did not come out to vote, there were a lot of problems in the election because a lot of native people couldn't understand the procedure that

Bean, Kurszewski, Cheezie, Barnaby
In Chief

1 was being carried out, a lot of the native population
2 did not show up at the polling station because it is not
3 their way of deciding the future of their community.
4 Native people do not go to the polls once a year to
5 elect someone to decide their own future. The way the
6 Dene of Fort Smith would much rather decide things is
7 through a structure that is set up by the people
8 themselves and that will meet their interests, the
9 interests of the long-term residents, the interests of
10 the majority instead of the interests of the minority
11 and transient population. The outcome of the December
12 8th election where one native person got on was a real
13 discouragement to the native people of Fort Smith who
14 wanted to try to participate within the present political
15 structure. They saw that there was little hope that they
16 could take an effective part in it, even though natives
17 are a 60% majority in the community.

18 They could not get the proper
19 representation on the Municipal Council because it is
20 a foreign system. Municipal Council is not the way
21 in which the native community of Fort Smith wish to
22 have the future of the community decided. It is not the
23 political structure within which they would like to
24 decide their own future. The situation in Fort Smith
25 shows why the Indian Brotherhood of the Northwest
26 Territories and the Metis Association of the Northwest
27 Territories have said, "No major developments before
28 land settlement."

29 In Fort Smith you can see why
30 this position has been taken. The people who are making

Bean, Kurszewski, Cheezie, Barnaby
In Chief

decisions about development are not the people who should be deciding these things. The core of the community is not involved in the decision-making process there. The majority is not involved in deciding what goes on. The different projects that are proposed for around Fort Smith and that area are being looked at by eight or nine people and a decision should not be made by these people. That's why we're saying that there should be no major development before land settlement. Our rights to decide our own future through our own political institution must be recognized first so that we will be able to take an effective part in the future of the north and be able to survive as a people.

I'd like to elaborate a bit on what we've presented here, emphasizing that the land claim is not just a claim for aboriginal title, it is a political claim. We feel we must have political security in order to survive, in order to take an effective part in deciding the future of the north.

The present political structure that exists there has been recognized as a structure that should decide what happens in the area, and the people who are on it^{have taken} positions about development of the area that I think are contrary to the way the native people of Fort Smith would like to see things happen. I am referring especially to instances like the Northern Roads Commission when it came around to the communities to find out what it was the people thought about in a way of proposed road systems and so on, and the Town

Bean,Kurszewski,Cheezie,Barnaby
In Chief

Council at that time came out with a brief and presented it to the Northern Roads Commission stating that the people of Fort Smith wanted a road to Fort McMurray, and wanted a dam on the Slave River, and this was presented by the Town Council which said that it represented the people of Fort Smith.

What we are saying is that when decisions of this nature or projects of this nature are proposed, that it should not be a council or a system that is foreign to the people that makes the decision about whether or not projects like this should go ahead or not. We feel that when projects are proposed that affect the future of our community, that affect the future of ourselves as a people, that we should be involved in this.

(QUALIFICATIONS & EVIDENCE OF G. KURSZEWSKI

AND G. CHEEZIE MARKED EXHIBIT 572)

1 Bean, Kurszewski
2 Cheezie, Barnaby
3 In Chief

4 And when the Town
5 Council presented its brief to the Northern Roads
6 Commission we had not been consulted. There was no
7 public meeting. There was no effort at all on behalf of
8 the local government system there to find out whether the
9 people of Fort Smith really believed and wanted to have
10 a road coming in from the south and a dam on the Slave
11 River. There was no effort to do this.

12 And these are the type
13 of decisions that we see being made every day that are
14 affecting our lives and planning our own future. And
15 we feel that this shouldn't go on any further, that before
16 any type of development goes ahead like the road to
17 McMurray and dam on the Slave River that the people
18 should be guaranteed their political security to decide
19 what happens to themselves, instead of the authority
20 to decide these things lying in the hands of a few
21 people and a foreign system.

22 The evidence that we
23 presented here has a small bit of an error in it -- well,
24 it's not exactly an error. There's a name change that
25 has just gone^{on} recently with the Metis population in
26 Smith. It has here Fort Smith Local and Metis
27 Association of the Northwest Territories. Well, the
28 Metis people have changed the structure of their organi-
29 zation and have called their organization, to begin with,
30 the Fitz-Smith Metis Community, to include all the
31 people who live around the area, and has also expanded
32 their organization to include every family that lives

Bean, Kurszewski
Cheezie, Barnaby
In Chief

in the area, that representation on our organization will be based on family units. That all families will be involved in our structure that the council that is made up will be made up of all the families represented or to be represented on it and this is how we wish to decide things about our own future and our own organization is through a structure or a system that the people themselves have formed, the people themselves -- a structure that people believe in; something that is based on the way they feel about how decisions should be made. I think this is an example of the way in which native people would like to decide things that happen to them and that is involving everyone concerned.

I think this has been the history of native people that no one should decide the future of any other person. That everyone should be involved in deciding what happens in a community and a few people should not decide for the rest.

This is what the native people in Fort Smith are attempting to put across to the rest of the population and I think that this is what we have emphasized most or ^{are} emphasizing most in our land claim is that we must be guaranteed the political security that is rightfully ours to decide our own future through our own political institutions, not through a foreign system of any kind but through institutions that the people themselves develop to meet their ^{own} needs. And this is what we emphasize is that no development take place until this right of native people is recognized by the Federal Government. And this is what we're after.

Bean, Kurszewski,
Cheezie, Barnaby
In Chief

1 We want the Federal Government to recognize that the
2 native people have a right to decide their own future,
3 and also have a right to decide their own future through
4 their own political institutions, not through a foreign
5 system. So I would just like to emphasize that as
6 the major point that I'm trying to make in this
7 presentation and I think my -- the Chief of the Fitz-
8 Smith Indian Band would, might want to elaborate some
9 more on this.

10 WITNESS CHEEZIE: Yes, I agree
11 with the presentation that we gave here today. The kind
12 of ideas that it is talking about was gathered from
13 studies and talks we had with -- and meetings we had with
14 our people in Smith.

15 The biggest thing which
16 I would like to talk about right now would be the
17 big gap between how territorial local government sees
18 their kind of government suitable for the people and
19 how we see our own government as being suitable for our
20 needs, and trying to show the gap that lies between these
21 two things. Just by an example of the election that we
22 had in Fort Smith. Like I was presenting in the evidence,
23 it shows clearly that we have a large majority of native
24 people in Fort Smith. And that large majority of people
25 approximately 60% have hardly any or not at all, any way
26 of deciding anything for themselves.

27 The local government
28 scheme set up through the Municipal Council is such that
29 everything has to be run through their council before
30 it is recognized.

Bean, Kurszewski
Cheezie, Barnaby
In Chief

The large number of
Dene people there have no say in this government at all.
In the election that we ran last December, we tried to
participate in this system. We ran candidates for the
four council positions plus the mayor's position and we
failed.

There's a lot of reasons
why we failed. The biggest one of all is the people don't
understand this kind of system. You are talking to
hunters and trappers, people living from the land and
a lot of people say they don't have no system of govern-
ment, they don't know what they are doing.

Well, I disagree and 60%
of the people in Smith disagree because there is no
way that they are being given any kind of a fair responsi-
bility to trying to solve some of the problems
themselves.

I think if the choice was
given to the people now I think we would go ahead and
operate under a system which we ourselves would develop,
not something that is imposed on us by a Territorial
Government and by the Federal Government or whoever or
the oil companies, whoever is doing it.

I don't believe that any
kind of development is going to help this situation at
all. And the Mackenzie Valley Pipeline Project, the
way I see it, if it has any -- if any of the communities
down in the Mackenzie experience the kind of things that
happen in Smith since Fort Smith has become a community
where people have been staying there for a large part of

Bean, Kurszewski
Cheezie, Barnaby
In Chief

their lives now and are not, have been moved into the community from the bush away from their hunting and trapping lifestyle.

I don't see any hope for those people. There is no way that you can tell an old trapper, an old man, that he doesn't have a system of his own which he can't voice his concerns because he can't write up a piece of paper like this and consequently give it in his native language to the mayor or the council and try to bring across his point of view of his concerns.

There is no way that can happen. I think the only^{way} that the people can survive here is that if they be given the time to develop their own kind of systems which they can operate under which would give respect to their kind of culture they have, lifestyle and the environment and the land that the Dene people are trying to recover from the government.

One of the things which I would like to talk about right now is the kind of things that we had experiences with in Fort Smith and to be more specific, the election. We had run six candidates in that election for the four seats and we had difficulty running this kind of a scheme because a lot of people didn't understand like they had to vote four times on one slate and they just -- at some of the ballots, there was only "X" on where there was supposed to have been four. And we had gone through a lesson, I guess you could call it, with these people telling them, this is how to vote; telling, explaining to them clearly that he had 4 votes. But a lot of them people took only one so we lost

Bean, Kurszewski
Cheezie, Barnaby
In Chief

1 a lot of votes like that. And that just goes to show
2 to me that this kind of system doesn't work for the
3 people up here and it won't ever work, I don't think, if
4 we don't sit down now and try to change it.

5 Because these people have
6 concerns that are 60% of the population in that town
7 and they have no control over anything. If they wanted
8 to build houses somewhere, they couldn't build houses
9 because there's municipal bylaws which are passed. They
10 say you can't put up a structure unless it is a certain --
11 meets certain criteria. And those are all tied and
12 interrelated and then they come to me. Well, a lot of
13 people in the Band come to me and say, "well, can I build
14 a house here and I say, Go ahead. Build it wherever you
15 want. It is your land." But they come around later and
16 say the Town Council says they will take you to Court
17 if you build a house on that land or if they went through
18 the Municipal Council route, they have come across a
19 bylaw which stopped them from building a home here.

20 Those are the kind of
21 things which I believe don't respect our concerns at
22 all. They don't make any room in it. Whoever drew them
23 up, I don't think were concerned about it.

24 I guess it all comes down
25 to the point of this. That the land claims is the only
thing that can ensure the survival of our people.

Bean, Kurszewski,
Cheezie, Barnaby
In Chief

1 It has to be a political
2 settlement. They have to recognize our rights to
3 develop our own institutions not something that's
4 imposed.

5 I don't know if we're repeating
6 ourselves a lot of times here, but the thing I'd like
7 to make quite clear to you I think is that there's no
8 way that the people up here can survive if the Federal
9 Government or the oil companies go ahead and build that
10 pipeline without giving the Dene people in the
11 Territories the right to decide for themselves, the
12 things concerning their lives.

13 The way I see things, it'll
14 destroy them. Looking at the case in Smith, that
15 community has been there approximately 100 years or
16 it's going on it's second hundred years and over those
17 hundred years, I don't think the governmental system gave
18 any room for the people out over there at the start
19 to develop in any way at all.

20 These people that we -- I
21 grew up in Fort Smith and even my parents I try to get
22 out to go and vote and my parents I sat down with her
23 and told her you got four votes. Make sure, you know,
24 you vote for the people that would represent our
25 concerns and she only voted once and that probably
26 happened a hundred times, even more. I don't know,
27 because we had meetings with people trying to explain
28 to them how this is the only that we can voice our
29 opinions by trying to go through the system so we
30 figured we had a good chance because we had 60% of the

Bean, Kurszewski
Cheezie, Barnaby
In Chief

population but we figured out that numbers alone don't make any advantage. Theoretically, it could have worked. It works beautifully theoretically, but when we're talking about something that these people don't know anything about. It don't make no sense to them.

The other point in our presentation I'd like to make it clear too, is that the government system I think the Town Council system doesn't leave any room for us to participate in it, because they undermine my authority as Chief . of my band there steadily.

Like, what they're telling me in effect is that I have no say at all in that community whereas some place might be like in Good Hope where the Band Council in that town and the many in people in town, they supposedly run things. In Smith, it's the other way around, but we have the majority that and trying to explain this to people'. don't know anything about these kind of things. You know, it don't make no sense to them at all.

I think that's why the only way can ensure our survival as people is that the government understand what we mean by political control. That we need to have time to develop own system by which we can operate under as equals. We're not asking for special status. We're just asking for what's rightfully ours, that nobody ever bothered to discuss with us. We're undergoing a change up here and it's happening very quickly. You're coming to the end of your Inquiry here and who knows how long till your Commissioner or whatever,

Bean, Kurszewski
Cheezie, Barnaby
In Chief

your recommendations come out.

We're trying to work under all these pressure of trying to prepare people. Trying to make them understand that if we don't do something now, if the government doesn't pay a heed to our question that all these things we're talking about is meaningless that we're going to be wiped out anyway. The kind of things that we want to see as important to our survival is being totally disregarded by going ahead and building the pipeline. I don't see any way at all that the pipeline can help towards the betterment of the natives in the Territories. If anything at all, it's going to destroy them.

It just goes to show like the situation in Smith which has been there for a hundred years, that the situation of the native people there has deteriorated all within that time and there has been no -- in my experience there has been no, I don't think any respect given to the people that were living there to the kind of things that they were concerned about; their hunting and trapping rights, the places where they could live. All those aspects that under all the land claims sound like we were talking about.

If the government don't realize our concerns of these, they can wipe us out. That's why it is really important that you look at that question that the land claims are not just land claims for a few rights to hunt in a certain area. Not around the pipeline or you know something to that effect. Who knows?

Bean, Kurszewski
Cheezie, Barnaby
In Chief

But we want to make it quite clear that we want to
see^a land claims settlement before the pipeline goes
ahead because there's no way that we can participate in
it as equal partners if that don't happen. We see
certain dangers in it. There's all kinds of dangers
which we see ourselves going through, experiments --
experiencing right now; to date, you know with the
election.

I myself find it very hard to
operate under the government system which doesn't give
me any authority to do anything at all, because they say
like the Fort Smith Town Council has the power in Fort
Smith and here I am the Chief and George, myself, we're
representing 60 percent of the population and we don't
have no say over anything. If the northern roads fact-
finding tour came to Smith and the people said "We want
a road" and everybody says it's for our own benefit.
Like, the price of food is going to^{go} down. You're going
to be able to buy food a lot cheaper. Like, it's going
to bring all kinds of benefits with it.

But those are side issues which
we're not concerned about. We're concerned about who's
making that decision to say build that road. Because
60 percent of us don't agree with that, because that in
itself just proves to us that this kind of system
doesn't operate, you know, respecting our concerns.

The other thing is about the
dam. They see that as one of the biggest -- one of
the major development -- biggest, largest development
in that area and the town fully endorses this thing.

Bean, Kurszewski
Cheezie, Barnaby
In Chief

It says that the town is 100 percent behind it. We
realize there's benefits coming along with it but we're
not talking about those. We're talking about the question,
who has the control there. We certainly don't have it.

You know, and for the Town
Council which is made up of nine people to represent the
whole town is stupid because these people come time and
time again to me, especially people in my band, Indian
people, they come to me and ask me for explanations of
why certain things are happening in the community, and
I try to explain to them that the Town Council is the
only body in that town which is recognized by the
Territorial Government and by the Federal Government or
other large corporations that want deal within that
town.

Like, if an oil company came
into town, they certainly wouldn't deal with us. They
deal with the town because that's a legitimate government
body in that town and they totally disregard 60 percent
of the people living there by doing that. If a big
project like this go ahead, there's no way that we can
participate in it as equals or any other ways and we're
going to be losing further and further.

We talked about this. We named
this paper, political genocide, imposed political
structures for us to Dene community structures. I think
George brought it out quite clearly that the only ^{way} these
people can survive, the only way these people can protect
themselves against development that is not for their
benefit is by developing a system of our own which we can

Bean, Kurszewski
Cheezie, Barnaby
In Chief

bring out our concerns and be strong enough to stand beside them and not having to let a few people decide for a large number of people, and that's what your central question is. That is, why should eight people have a -- the right to decide over a large population like in Smith?

A lot of these people used to live on the land and one of the questions they're having to deal with now since moving in the communities is how we participate in the government system. How do we participate in the Town Council? How do we bring our concerns known? One of the problems is the language barrier. To go back to the election, we -- everything was in English and the language predominately in Smith right now is Chipewyan, French and probably English, and a large population of Cree. The dominant language which the whole election was held through, was English, and 60 percent of the town can't converse that well in English.

Even myself, I'm a high school graduate. I still can't talk the language. I find it hard understanding different meanings to different words because it has one meaning in a different context and take it out of that one, it has a totally different meaning, and when we're talking or we're trying to explain something like a municipal ordinance to people like this, how do you explain those differences? In our language, there's no distinction like that.

That just goes to show -- shows by me that there's no consideration made the people who

Bean, Kurszewski
Cheezie, Barnaby
In Chief

1 institute this system on us. They give us no right
2 at all to decide anything for ourselves.

3 I think I'll end with that.

4 Thank you.

5 THE COMMISSIONER: Thank you
6 Chief.

7 MR. BELL: Mr. Bean?

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Bean, Kurszewski, Cheezie, Barnaby
In Chief

WITNESS BEAN: Two opposing

forces are presently at work in the north. On the one hand, powerful corporate and governmental interests want to build a gas pipeline down the Mackenzie Valley through Indian land. At least one of the applicants, Arctic Gas, asserts that among other things this pipeline will have favorable effects in the political development of the north; specifically, that it will support a process of decolonization. On the other hand the Dene say that there should be no pipeline before a land settlement. They assert that they presently live in a colonial situation, a proposition with which Arctic Gas may agree. But they then proceed to assert that their land claim must mean the right to decide what happens on their land, meaning obviously the decision with respect to the pipeline. To build the pipeline without their consent would not only immediately damage their claim, it would also mean the conservation, indeed further growth of the existing colonial political system. Therefore the pipeline prior to a land settlement would further colonize the Dene.

I intend, by focussing primarily on the phenomenon of the creation and growth of local government structures within northern communities, to demonstrate that the Territorial administration has been and continues to be a colonial institution.

When I came north in 1968 the movement from traditional hunting camps to centralized settlements was just being completed in the

Boan, Kurszewski, Cheezie, Barnaby
In Chief

1 Central Arctic. In the brief orientation session which
2 the previous area administrator of Cambridge Bay had
3 with me, he related his success at finally convincing
4 the Perry Island people to move into Cambridge Bay.

5 Q This is --

6 A Yes, and you've got the
7 summary perhaps.

8 Q O.K., now I've got it.

9 A O.K., the date is unfor-
10 tunately March '76.

11 It was because this previous
12 area administrator had taken the trouble to travel to
13 Perry River by dog team that he had been able to con-
14 vinc the family to relocate to Cambridge Bay. He had
15 also made it clear that only in Cambridge Bay would
16 government housing and rations be available. There
17 too, the family could be together with the children
18 who were in grade school. As my predecessor saw it,
19 it was his success at convincing the last remaining
20 family group to move to the settlement that was
21 primarily responsible for his promotion to a new
22 position in the Regional Office. In retrospect, the
23 move from camps to centralized settlements had great
24 significance to the native peoples, not the least of
25 which was the establishment of the dominance of the
26 government and the reciprocal dependency of native
27 peoples.

28 The previous area administrator
29 also briefed me on the Advisory Council. There was a
30 need to co-ordinate activities within the settlement

Brian Kurszewski, Cheezie, Barnaby
In Chief

and the Advisory Council meetings were useful to keep everyone informed of each other's activities. As I found out later, membership on the Cambridge Bay Advisory Council was typical of most other settlements. There were representatives from each federal agency in the community -- the R.C.M.P. corporal, the N.C.P.C. manager, the head nurse, the M.O.T. airport manager, the school principal, representatives from each church, the Bay manager, the private business enterprises, and the area administrator.

Discussion centred around mutual administrative concerns -- the nurse asking the R.C.M.P. to shoot some loose dogs; the Bay manager asking the administrator to guarantee an advance for someone to go hunting; the local entrepreneur asking the N.C.P.C. manager if there would be money for a contract to build an addition to the Power House. Subject to regional approval, this group would decide on general concerns of a municipal nature -- where new houses and government installations would be placed, which roads needed upgrading, where street lighting should be installed. Usual topics of general conversation were the problems of Eskimo drinking and social life or else the lack of ability of the regional officers to understand the reality of community life.

THE COMMISSIONER: Sorry, the regional officers say in Inuvik, Frobisher, etc.?

A Yes, at that time it was Fort Smith, yes, or Cambridge Bay.

Q Fort Smith was the

Bean, Kurszewski, Cheezie, Barnaby
In Chief

1 regional office for Cambridge Bay.

2 A As it still is.

3 Q I shouldn't have asked
4 the question.

5 A The Advisory Council was
6 thus a small clique of the traditional colonial powers
7 in the community. All members saw themselves primarily
8 responsible to agencies and interests outside of the
9 community. When the Territorial Government began its
10 local government program in 1968-69, the common per-
11 ception, both within communities and in the governm ent
12 was that Advisory Councils would now be elected. The
13 elected council was still to be advisory to the area
14 administrator, later settlement manager, until it
15 became a hamlet. The elected council would deal with
16 the muni dipal services of the settlement, specifically
17 water delivery, sewage and garbage pickup, roacs and
18 air strips, fire protection, and a continuation of the
19 Community Development Fund now called the Per Capita
20 Grant.

21 Another major influence on the
22 Settlement Council program was the previously introduced
23 low cost housing program. First introduced to the Eastern
24 Arctic in 1964, the Housing Association program was
25 seen as a successful first step towards self-government.

26 In conversation with the
27 regional director of the Fort Smith region in 1968-69
28 the introduction of local government Settlement Council
29 program was described as an evolution of the Housing
30 Association program to include local involvement in

Bean, Kurszewski, Cheezie, Barnaby
In Chief

municipal services in the community. Because of its importance, I will outline the major aspects of the Housing Association program:

1. The structure, responsibility, eligibility, and method of elections were strictly predefined.
2. Housing Associations were granted basically three areas of responsibility: Responsibility to collect rent, responsibility to assign tenants, and responsibility to provide maintenance. Each of these areas had strict guidelines.
3. Housing Associations have no say in the design of homes or in the number of homes assigned to a community. They have no power to modify or reform the system under which they operate.

Consequently, one of the effects of this program has been to reinforce a setting where a government official, usually white, is the "expert" on how the community is to deal with its housing problems. The experience and understanding of community residents is inadequate as a basis for judgment because the rules and procedures are alien to the background of the residents. To operate successfully on a Housing Association one must look not to his own cultural background but must adapt to a set of externally imposed rules and procedures. The program then makes local residents dependent on government officials for expertise.

The development of the local government model. Although the Territorial Government presented Municipal Councils as an opportunity for communities to run their own affairs, it is interesting

Bean, Kurszewski, Cheezie, Barnaby
In Chief

1 to examine some of the specifics by which this local
2 autonomy was to evolve. The structure of the council
3 was completely predetermined prior to its introduction
4 into the communities.

5 It was the bureaucrats of the
6 Territorial administration, ultimately responsible to
7 Ottawa, who designed the structures and delineated the
8 powers of local councils. A passage from an article
9 by Dave Flynn, one of the civil servants responsible for
10 these decisions, is particularly revealing on this point:

11 "The new Department of Local Government in 1967
12 decided to continue the system of democratic
13 government already started in the north. This
14 was done partly for continuity. The large centres
15 already were incorporated as municipalities; a
16 few others were on their way toward control of
17 their own affairs.

18 In addition, we the territorial staff in charge
19 of local government, had to remember the overall
20 purpose of the Department of Local Government,
21 to prepare for additional responsibility at the
22 territorial level. We had to satisfy Ottawa
23 that government at the local level was legitimate.
24 This meant it had to be representative and
25 responsible, two key principles of democratic
26 government."

27 There is an additional
28 sentence that I quoted in my study that I'll quote now
29 from the same passage:

30 "We believe that we can design a democratic

Bean, Kurszewski, Cheezie, Barnaby
In Chief

1 system of government which would suit all
2 communities."

3 Mr. Flynn's comments accurately reflect the essential
4 colonialism underlying the efforts of the Territorial
5 administration's approach to political development.

6 First, Mr. Flynn clearly
7 shows that the overall purpose of the program was not
8 the development of community level political autonomy per
9 se, but rather the satisfaction of conditions set by
10 Ottawa which would lead to an increased transfer of
11 responsibilities to the Territorial administration.
12 Local government in the communities was simply the
13 means by which the Territorial administration could
14 justify gaining increased administrative responsibilities
15 from Ottawa.

16 The second telling indication
17 of colonialism is Mr. Flynn's assumed right to design
18 a system of government for the Dene and Inuit. Mr.
19 Flynn implies that the only system of local government
20 in the north worth examining was that of the
21 incorporated municipalities (in 1967, Fort Smith,
22 Inuvik, Hay River and Yellowknife). The idea that either
23 the Dene or the Inuit might already have a system of
24 government appears to be ignored. There are specific
25 reasons for this which I will discuss later. To my
26 knowledge, it was never considered that the peoples being
27 governed might wish to have some say in the design of
28 their own government. The Territorial administration
29 apparently saw no contradiction in talking of people
30 governing their own affairs while at the same time

Bean, Kurszewski, Cheezie, Barnaby
In Chief

1 imposing a completely predetermined and alien government
- structure for such decision-making.

3 Later in his article Mr.
4 Flynn disallows the possibility of the evolution of
5 traditional Dene forms of government:

6 "At first we were told that in Indian communities
7 the traditional Chief represented the community.

8 In the first place, we argued, the Chiefs were not
9 usually traditional. They were chosen originally
10 by the Department of Indian Affairs as a
11 representative for certain purposes of the
12 Federal Government, ranging from the signing
13 of treaties to greeting V.I.P.s. Secondly, the
14 Chiefs were apparently no longer representatives
15 of the Indian community, judging by the number
16 of delegations opposing the Chief's policies.
17 Finally, Chiefs were in no way representative
18 of non-Indian residents of the communities."

19 Clearly the Territorial
20 administration was not prepared to consider Chiefs and
21 Band Councils as a form of local government for its
22 purposes. Instead, the Department of Local Government
23 took it upon itself to design in specific detail the
24 form and structure which local government would take.

25 A complex suggested
26 Constitution was drawn up for the approval of Settlement
27 Councils, and I refer you to Appendix A of my study
for this document, if you're interested. A Training
Manual was also designed for instruction in the use of
this new form of decision-making.

Bean, Kurszewski,
Cheezie, Barnaby
In Chief

I would like to quote
from this manual on how to deal with the members of
the communities who might attend meetings and wish to
get involved in the decision-making.

"Section 8-1 -- When members of the community
or other visitors attend council meetings.

Although the public has a right to attend
council meetings, the public has no special
right to take part in council discussions, but
the council, through the Chairman, may, if it
wishes, ask or invite any member of the
public or special visitor to join the discussion.
The Chairman must make sure that the visitors
remarks are to the point and as brief as
possible. When the discussion has ended and
before the vote is taken, the chairman should
thank the visitor who then withdraws from the
proceedings to the back of the room away from
the council table.

If any member of the public interrupts or
disturbs the council meeting in any way, he may
be asked to leave and if he will not do so, the
assistance of a police officer may be obtained
in removing the offender. In the event of a
great deal of disturbance, after repeated calls
for order by the Chairman, the Chairman
should adjourn the meeting stating his reason
for doing so and naming the date, time and
place for the next meeting."

Bean, Kurszewski,
Cheezie, Barnaby
In Chief

THE COMMISSIONER: That's what
is known as a worst case situation. You are going to
be a while longer. I think we'll just take another five
minute break if you don't mind and we'll stretch our
legs for a moment.

(PROCEEDINGS ADJOURNED FOR A FEW MINUTES)

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

THE COMMISSIONER: Carry on,
Mr. Bean.

WITNESS BEAN: Discussion on
the local government model: The model chosen by the
Territorial Administration was then effectively a
Southern Municipal model. The process and content of
such a structure contradicts the more traditional
decision-making patterns of the Dene. Instead
of a consensus method, a parliamentary procedure of
majority rule was chosen. Instead of community involvement
participation was actively discouraged in favour of a
strict principle of representative leadership.

Early in the introduction
of these councils, development officers encouraged the
use of native languages on the council. It appears
significant that such a move had to be encouraged by
the development officers and was by no means
spontaneous. However, in settlements with which I am
familiar, the use of the local language was abandoned.
The reasons given by the local people were that there
are no words for council rules; if you are going to
speak in a native language, then you are going to have
to use native rules.

1
2 Bean, Kurszewski,
3 Cheezie, Barnaby
4 In Chief

5
6 The overall nature of
7 the settlement council can be seen to be based in a
8 southern culture. It is bound to a culture which has
9 an elitist decision-making pattern and does not expect
10 or encourage broad involvement of its citizenry. It
11 assumes the need for quick, business-like decisions
12 without allowing time for reaching consensus. The area
13 of responsibilities of the council is based on an
14 assumption of an evolving tax base suited to a culture
15 which has an ethic of private property and ownership.
16 The council, in effect, becomes the forum for working
17 out the interests arising out of the ownership of private
18 property. The range of responsibilities delegated to
19 the council -- roads, airstrips, streetlights, water,
20 sewage, and garbage are prime topics of community
21 discussion only in a private propertied tax-based
22 culture. When each person owns his own property or
23 business, then these are the matters which the individual
24 interests must collectively work out. However, in cultures
25 not based on an ethic of private ownership, such topics
26 are incidental to other collective problems.
27
28

29 With the Dene, some of the
30 more central collective issues might be organizing
31 community hunts, deterioration of trapping lands, education,
32 and care of the elders. Yet, councils have been told
33 that such matters are not their responsibility; rather,
34 they are the responsibility of various government agencies
35 involved.

36 Another rather curious
37 feature of the settlement council model is the concept of

1
2 Bean, Kurszewski,
3 Cheezie, Barnaby
4 In Chief

5 responsibility envisaged by the Territorial Administration.

6 In his article, Mr. Flynn outlines the responsibility
7 of the Settlement Councils:

8 "The second democratic principle we insisted
9 was that of responsibility. This meant
10 responsibility to those who elected the
11 Council and to those who provided the funds
12 for operating the community. In the south
13 the people who elect a Council also pay
14 taxes for that Council's budget and,
15 therefore, the Council's prime responsibility
16 is to the electorate. In most northern
17 communities, on the other hand, little money
18 is available for local budgets so that as
19 a result Councils have a dual responsibility:
20 to the local residents whom they represent and
21 to the senior government which supplies their
22 operating budget."

23 In my experience
24 responsibility was generally defined as indicated in Mr.
25 Flynn's article. The prime responsibility of the Council
26 was to whomever provided the funds. When communities
27 became tax-based, their prime responsibility would then
28 be to the tax-payers. Until that time, their prime
29 responsibility was to the Northwest Territories Adminis-
30 tration.

31 It follows that the
32 Territorial Administration viewed settlement councils
33 as local administrative units. They were not viewed

Bean, Kurszewski,
Cheezie, Barnaby
In Chief

as political bodies in the sense that they would be bodies whose function was to represent the views, values and interests of the electorate they represented. Rather, their function was seen as primarily administrative.

Settlement Councils in the Communities: The Department of Local Government was given a mandate to undertake the initiation of Settlement Councils into the communities. An education process was planned whereby Settlement Managers, responsible to the Executive, would assist the fledgling Local Councils in their efforts to gain sophistication. Once a community turned hamlet, it was considered by definition to be developed. Municipalities such as towns, villages, or cities were considered to represent the ultimate evolution of the Settlement Council model.

In 1972, the Commissioner's Annual Report listed pipeline development ahead of Settlement Councils as a concern of the Department of Local Government:

"Since 1970 the Territorial Government has been involved in the planning for a pipeline down the Mackenzie Valley...In general it has been agreed that the Territorial Government will have primary responsibility for those aspects of pipeline and highway development which specifically affect the people of the Territories.

Many of the possible benefits and harmful effects for northern residents concern matters which must be negotiated with the pipeline

Bean, Kurszewski,
Cheezie, Barnaby
In Chief

1 companies. For this reason, the
2 Territorial Government is a participant
3 in the detailed negotiations between the
4 Federal Government and the pipeline companies,
5 and is providing considerable input on such
6 matters as employment and training agreements,
7 pipeline routing and the operation and siting
8 of construction camps."

9 The next item in the Departmental Report then refers
10 to Settlement Councils:

11 "Throughout 1972 the Department of Local
12 Government continued to assist in the
13 transfer of governmental responsibilities
14 to settlements. The success of this program
15 is heavily dependent upon the willingness
16 of communities to accept responsibilities."

17 To suggest that
18 communities had a questionable willingness to accept
19 responsibility hardly gets to the dynamics created by
20 the Local Government Program. Certainly, the Settlement
21 Council phenomenon was greeted with some confusion.
22 On the one hand, people eagerly acknowledged that they
23 wished to run their own affairs. There were repeated
24 comments by community people to the effect that natives
25 should be allowed to run their own affairs.
26 The government or whites should not control native
27 people. Therefore, the Local Government concept was
28 welcomed.

29 On the other hand, the
30 emphasis on parliamentary procedure, on sticking to the

Bean, Kurszewski,
Cheezie, Barnaby
In Chief

1 issues of garbage, sewage and water confused and frus-
2 trated people to the point where they wondered what all
3 this had to do with running their own affairs. Rumors
4 of major developments were beginning but Councils were
5 told that these were not their responsibility. The
6 fact that Councils could not act on decisions until they
7 received Government approval made it even more unclear
8 as to what the Government meant by "running one's own
9 affairs."

10 From my experience, I
11 think now that almost without exception, Councils were
12 perceived as foreign institutions whose purpose was in
13 the main, to serve interests outside the native community.
14 I can recall various discussions in different communities
15 where native people often Councillors, would maintain
16 that their particular Settlement or Hamlet Council was
17 part of the Territorial Government, not part of the
18 community. I would counterargue that the Council was
19 part of the community and that the community could use
20 the Council to express their own ideas and interests.
21 The sense of alienation was pervasive, however.

22 Hugh Brody in his recent
23 book "The People's Land" describes the contradictions
24 inherent in the position of the administrator, indeed
25 the whole government, vis-a-vis the local native
26 population in Eskimo communities during this initial phase.

27 "The administrators thus find themselves in
28 a curious position. On the one hand, they urge
29 the Eskimo community to believe that every effort
30 is being made to give them responsibility for

Bean, Kurszewski,
Cheezie, Barnaby
In Chief

1 their own affairs. On the other hand,
2 they insist that many of the affairs that
3 the Eskimos regard as most important cannot
4 be included within the sphere of their
5 responsibility. They soon realize that
6 all fundamental decisions are still to be
7 made by whites. It seems likely therefore,
8 that the Local Government Programs, in the
9 context of the Eskimos' sense of subordinate
10 status, have accelerated that withdrawal and
11 indifference which the Local Government
12 Programs are specifically aimed at preventing."

13 There was a hopeful belief
14 on my part, and on the part of many other Local
15 Government Development officers, that communities would
16 take over the Settlement Councils and ultimately reform
17 them to use them for their own interests and purposes.
18 On reflection, such a hope seems rather fanciful. Any
19 serious attempts to use the Council structure beyond
20 its predefined municipal service function were soundly
21 rebuffed.

22 Following from the
23 Carrothers Recommendations, there was initially a
24 government policy of encouraging Regional Council
25 activities. Carrother's report recognized the importance
26 of people becoming aware of themselves as collective
27 units, with rights to organize on a collective basis.

28 However, it did not take
29 long before it was recognized that such collective
30 activity was particularly problematic for the

Bean, Kurszewski,
Cheezie, Barnaby
In Chief

1 Administration. Such gatherings were politely tolerated
2 at first. Soon a policy emerged that the Commissioner
3 would have to approve all details, including agenda
4 and delegates, prior to the event. The name of the
5 responsible Local Government official also had to be
6 included. Generally such plans were perfunctorily
7 approved. However, when Fort Good Hope, Fort Franklin,
8 Fort Norman, Fort Wrigley, and Norman Wells decided
9 to hold a Regional Conference in Fort Norman in the
10 fall of 1973, approval was not so automatic. Fort
11 Wrigley had taken a strong stand against the construction
12 of the Mackenzie Highway and the Administration feared
13 that such an attitude might spread.

14 Fort Norman, the organizing
15 community, was therefore told that it would be inconven-
16 ient to hold a Regional Council Conference at that time.
17 It was implied that funding was short. However, the
18 Region persisted. The Director of Local Government
19 advised me that the Minister had indicated that there
20 was to be no regional gathering, especially not one
21 involving Fort Wrigley. The Councils, it was argued,
22 should have some respect for the government. If the
23 government felt that the present timing for a Regional
24 Conference would be difficult, then Council should
25 realize that it would be in their best interest to
26 wait until they had government approval. The government
27 does not change quickly and Councils must learn to be
28 realistic about what they can expect from the government,
29 it was stated.

Bean, Kurszewski
Cheezie, Barnaby
In Chief

The Local Government position vis-a-vis Band Councils also remains the same. Although in Arctic Red River the communities decided to evolve the Band Council structure to include the municipal function of a Settlement Council, the Director of Local Government indicated that he would permit such a body as long as it was viewed as a pre-settlement council which would be encouraged to adopt normal settlement council structure and procedure as soon as possible.

It is now my opinion that despite official declaration to the contrary and despite the individual beliefs of various local government officers, the Territorial Administration as a whole has had no serious intent of allowing either communities or native peoples any significant degree of autonomy or any real chance to run their own affairs. One may well ask why the Territorial Administration bothered with the Local Government Program at all if it did not intend to allow people greater political autonomy. Why did it put so much effort in establishing local councils? The answer is quite simple. It was very much in the interests of the Territorial Administration to undertake such a program to maintain and enhance its own position. More specifically, the major interests of the Territorial Administration were served in the following ways.

The Territorial Administration wished to get a greater degree of administrative control from Ottawa. Ottawa set a condition to such a transfer, the condition being that the Territorial Administration had to develop a greater

1
2 Bean, Kurszewski
3 Cheezie, Barnaby
4 In Chief

5 appearance of being a legitimate, democratic government
6 in the north. This appearance could be created through
7 the establishment of a municipal government infrastructure,
8 Ottawa stated.
9

10 There was one important limita-
11 tion on this municipal infrastructure however, if the
12 Territorial Administration wished to gain control from
13 Ottawa. Chiefs and Band Councils through the treaties,
14 and the Indian Act were a direct federal responsibility.
15 to acknowledge the Chiefs and Band Councils, as a legiti-
16 mate form of local government would therefore defeat the
17 Territorial Administration's purpose.
18

19 Thus, the Territorial Admininstra-
20 tion could argue for a greater control over northern
21 administration if it could develop a municipal infra-
22 structure controlled through Territorial Ordinances ; that
23 is, one which excluded Chiefs and Band Councils. The
24 Territorial Adminstration therefore adopted an ideology --
25 which didn't acknowledge race or cultural difference --
26 "We're all northerners."
27

28 When the federal government
29 began funding native organizations in the Territories,
30 it is therefore understandable that the Commissioner
31 was displeased. A letter dated October 8, 1971 from the
32 Commissioner to the then Minister of Indian Affairs and
33 Northern Development outlines the Commissioner's view
34 on the matter and clarifies the interests of his
35 administration. This letter is the best available
36 document to indicate the true interests of the
37 Territorial Administration and I refer you to Appendix C
38

Bean, Kurszewski
Cheezie, Barnaby
In Chief

of my study for the full text.

I would like to quote a short section from it to give an indication:

"The formula. The present departmental approach as approved by Cabinet and now government policy is based on one of national interest. In other words, what is done nationally must be done regionally. The basic formula developed for Indian people in the provinces where they are hopelessly in the minority and only 1 percent of the Canadian population is being used in the Territories where the Indian and Eskimo population is in the majority.

Just four years ago, an administration was developed, organized and sent to the north where they could be closer to the people, equipped with the authority to make on the spot decisions affecting this provincial-like responsibilities normally carried on in the provinces. Here possibly is the danger and perhaps error. What is done in the south for Indians in Toronto, Montreal or Vancouver where they are in the minority and disadvantaged perhaps having only one thousandth of one percent in terms of population in those three cities is duplicated here."

In other words, a formula is being applied forgetting that the Northwest Territories Government was established specifically for all the residents of the Territories and spends one hundred percent of its funds for this purpose.

1 Bean Kurszewski
2 Cheezie, Barnaby
3 In Chief

4 As Indian, Eskimo and Metis

5 people are in the majority, their special interests
6 are being looked after. Again, where the policy in the
7 south does not take on a racial connotation, because of
8 the minority position of the Indian, such as emphasis
9 in the north becomes racial because of their majority
10 position.

11 There are several other ways
12 in which the interests of the Territorial Administration
13 were served by the Local Government Program. AT the
14 time of transfer of federal to territorial administration
15 in the north, there were many federal civil servants
16 who chose not to become part of the Territorial
17 Administration. There was, at that time, considerable
18 talk and wishful thinking that the Territorial Administra-
19 tion was hopelessly ill-equipped to carry on and that
20 undoubtedly the Federal Government would have to re-assert
21 itself within a short while.

22 Thus, the Territorial Administra-
23 tion needed very quickly to establish credibility within
24 the north. By including community residents and offering
25 to let people run their own affairs, the Local Govern-
26 ment Program initially won the allegiance of many
27 native northerners for the Territorial Government.

28 The Development vs. administra-
29 tion struggle. In the January 1974 sitting of Territorial
30 Council, a motion was passed which asked the Department
31 of Local Government to involve the communities in
32 preparing a philosophy paper which would outline the
33 philosophy of the Department. The community meetings,

Bean, Kurszewski,
Cheezie, Barnaby
In Chief

held in Dene settlements produced a consistent response; the Dene did not view settlement or hamlet councils as their ^{own} community institutions. Settlement councils were seen as imposed belonging to the government. Repeatedly, Chiefs and Band Councils were seen as the true community government.

The paper also warned of the situation within the larger municipalities. The Territorial Administration viewed towns, villages, and cities as a more highly evolved form of community government but the point of view of the native people in such centers was rarely considered. In relation to the process of establishing municipal government, the Philosophy Papers states:

"In a part of Canada two-thirds populated by native peoples, a continuation of this process raises depressing prospects."

The philosophy paper suggested that settlement councils be viewed as a process of political development rather than as the creation of administrative structures.

"The Department assumes then that as a first priority, the development of municipal government must be seen as a means by which the original people of the Northwest Territories may come to play a major role in all levels of government. In practice, this confirms the emphasis on the obligations to the communities for political and social education toward a working awareness of their particular interests rather than exclusively providing

Bean, Kurszewski
Cheezie, Barnaby
In Chief

administrative institutions as the communities move through levels of incorporation."

The philosophy paper was never discussed in Council. Once that January 1975 Council session was over, with the philosophy paper never having been discussed, hopes were gone that the Local Government Program might be changed. Within the Department of Local Government, there had been a growing division between the developmental interests which held that local government should be primarily the process of development of political awareness and the administrative interests which held that local government should be primarily the development of administrative structures.

The fate of the philosophy paper essentially ensured that from that point on, Local Government was to restrict itself to developing local administrative competence in a southern municipal structure. Roads, airstrips, water, sewage, garbage, town-planning and land became the primary concern of the Department. Those involved in the preparation of the philosophy paper have since resigned from the Territorial Public Service.

A memo, recently published in the media, from the Commissioner to the Director of Local Government dated December 12, 1975 confirms that the struggle within the Department to make Local Government anything other than the imposition of southern municipal structures is now over.

The Commissioner states:

Bean, Kurszewski,
Cheezie, Barnaby
In Chief

"I intend to insist in the new year that Local Government concentrate on the mechanics of preparing communities for hamlet and village status."

The Commissioner goes on to quote from notes made by Mr. Cotterill regarding the Local Government Program:

"The basic thrust of the Development Division since its inception has been that of creating political awareness at the settlement level in the Northwest Territories. This thrust is no longer valid in that a good level of political awareness has been achieved and the thrust must be changed to look beyond this basic developmental stage.

...The kinds of support now required by settlement and municipal councils is not available from the Department of Local Government and not being provided by them. Support is needed for the post political awareness stage and this type of support is basically technical in nature, not philosophical.

The role of the Development Division, Department of Local Government should be changed from that of developing political awareness to that of providing technical support to settlement and municipal councils in the N.W.T. This technical support would include such areas as finance, personnel, community planning, etc.:"

It is not clear what the term "post-political awareness" means, but in my opinion, it is not in the interest of the Dene to define the present situation as requiring administration rather than political development. As the same time, the notion

Bean, Kurszewski
Cheezie, Barnaby
In Chief

1 that an arm of Territorial Government as a colonialist
2 institution can increase political awareness among the
3 Dene, on the colonized, is a contradiction in terms which
4 appears to have escaped even the most well intended of
5 local government people.

6 Analysis of the Territorial
7 Administration. An analysis of the Territorial
8 Administration's policy on the development of local
9 government is, on reflection, really quite simple. As
10 stated earlier, the Territorial Administration had direct
11 interest in the appearance of a grass-roots political
12 development. However, whenever the process threatened
13 to become more than appearance, immediate attempts were
14 made to limit and control the process. Rather than
15 welcoming this as the success of the Local Government
16 Program, the Territorial Administration has attempted
17 to diffuse and limit that development by channeling it
18 into administrative complexities and bureaucratic
19 lethargy.

20 In my opinion, it is this
21 continued response of attempting to control, diffuse and
22 undermine the political self-determination of the native
23 people within the Territories which most clearly shows
24 the continuing colonial nature off the Territorial
25 Administration in the north.

26 The Territorial Administration
27 has an interest in maintaining and enhancing its control
28 over the Dene and their land. It seeks to impose a system
29 of institutions and decisions foreign to the Dene, a
30 system serving non-Dene interests. Not only does

Bean, Kurszewski,
Cheezie, Barnaby
In Chief

1 this system not serve Dene interests but indeed it
2 divides the people and undermines their ability to
3 maintain their own cultural patterns.

4 In my opinion, therefore, the
5 Territorial Administration does not represent the
6 interests of the Dene. The growth of the Territorial
7 Administration in no way represent the decolonization
8 of the Dene.

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Boan, Kurszewski, Cheezie, Barnaby
In Chief

1 Although I have focused on the
2 programs of the Department of Local Government, the
3 situation within other departments is of a similar
4 character. In fact, it is the Department of Local
5 Government which is generally regarded as the decoloniz-
6 ing wing of the Territorial administration with the other
7 departments having a somewhat more directly colonial
8 view.

9 Further, the very nature of the
10 responsibilities given and more importantly, not given
11 to the Territorial administration confirm its colonial
12 character. With non-renewable resource development
13 being the most important issue in the Territories
14 today it is the Federal Government, not the Territorial
15 administration which maintains full and direct control
16 in this area. Thus both in the nature of carrying out
17 its responsibilities and in the range of responsibilities
18 it holds, the Territorial administration is a
19 colonial institution.

20 Nordicity. In the overview
21 hearings, Professor Hamelin suggested to the Mackenzie
22 Valley Pipeline Inquiry that what was needed in northern
23 political development was an injection of nordicity.

24 According to Professor Hamelin:

25 "...this means if we do something in the north.
26 let us do it according to a northern spirit,
27 a northern mentality. This very northern approach
28 cannot be taken for granted among the powerful
29 southerners who usually manage the major
30 decisions affecting the north. Above all,

Bean, Kurszewski, Cheezie, Barnaby
In Chief

through this nordicity principle I expect each of us to try to estimate the quality of his own northern activity."

Professor Hamelin seems to suggest that nordicity is some sort of measurable quality of one's mentality which grows out of the geographical latitude at which one lives:

"The concept of nordicity is diversified.

It applies not only to the mentality of the people, but can be used geographically to estimate the degree of northness of any given locality."

It is my opinion that the concept of nordicity only further obscures rather than clarifies the political realities of the Canadian north. The issue is not the mentality of the politicians and bureaucrats making decisions for the Dene, but the very fact that they, and not the Dene are making those decisions. Professor Hamelin would advocate perhaps a more benevolent colonialism, but colonialism just the same. The essential issue which Professor Hamelin does not address is the right of present decision-makers whether imbued with nordicity or not, to be making decisions for the Dene.

THE COMMISSIONER: Mr. Bean,
to be fair to Professor Hamelin, he is -- his presentation at the overview was prepared from the French language which is his first language, and was translated in a way that I don't think he felt was altogether satisfactory , and it may be that the concept

Bean, Kurszewski, Cheezie, Barnaby
In Chief

of nordicity that he enunciated was rather more subtle than the way it actually came out. That may or may not be so, but I recollect that it was apparent to all of us that English was Professor Hamelin's second language and gave him, I think he wouldn't mind my saying this, some little difficulty from time to time in the course of his presentation. However, carry on.

A Thanks for pointing that out. The essential point is the last one. The essential issue is the right to decision-making regardless of what mental outlook they have to be making decisions for the Dene.

A pipeline and political institutions. There are several straightforward ways in which a pipeline, either pipeline, will support the colonizing process of the Dene people.

1. The creation of Settlement Councils in each community has created a forum whereby non-Dene can very quickly take over the political life of a Dene community . Ironically, a person moving to Fort Norman, for instance, from the provinces would be more familiar with the rules governing the structure and process of the Fort Norman Settlement Council than the average Dene resident of Fort Norman. Thus the inevitable influx of settlers either directly or indirectly related to pipeline development would sooner or later involve themselves in the present community councils.

Gemini North states that the drive to establish local government in the Mackenzie

Bon, Kurszewski, Cheezie, Barnaby
In Chief

Region:

"...has eroded the powers of the Band Chief and Council by substituting an elected council based on community affiliation rather than one based on ethnic origin."

Gemini North states further:

"...a substantial in-migration of white southerners in high impact communities could reduce the roles or native northerners on community councils."

The Van Ginkel Associates

study states that:

"...the hydrocarbon industry will have an urgent need for workers and directly and indirectly will create thousands of jobs within the Mackenzie Valley -- more jobs than could be filled by all the workers resident in the region."

The Gemini North study also has a table indicating the percentage of participation on Settlement or Hamlet Councils by residents, non-permanent residents and administrators. They conclude:

"It is clear that the percentage of transient residents on councils is generally less than the percentage of permanent residents, native or white. Overall, the settlements appear to be less reliant on outsiders than they have in the past."

Such statistics can be misleading, however, because in my experience there is no need for the majority of the council to be non-Dene before the Dene are effectively excluded from acting

Bean, Kurszewski, Cheezie, Barnaby
In Chief

on their interests. In the cases with which I am familiar where non-natives have dominated Settlement Councils, there have been only one or two non-native councillors. However, because the council is an institution which is foreign to the natives and familiar to the non-natives, even one non-native can very easily dominate and manipulate. It is inevitable that to a greater or lesser degree, settlers will be attracted to the Dene communities as a spinoff of the pipeline project. I am told that in Coppermine, for instance, two new businesses have been started as a result of increased cash flow to that community resulting from employment with Gulf Oil. In both cases, a pool room and a restaurant, the businesses are owned and operated by non-natives.

Thus, as long as the community unit of government is a non-native institution, as soon as settlers move to such communities as they inevitably will, non-natives will increasingly take over the local community government.

2. As indicated earlier in this study, the values of private property and the accompanying tax base are not those of the Dene culture. An effect of the pipeline development will be, however, to reinforce such non-Dene systems within Dene communities.

The Van Ginkel Report states:

"The creation of jobs and income, as detailed in the report, will increase the revenues of the communities and will contribute to the financing the improvement of communities."

Bean, Kurszewski, Cheezie, Barnaby
In Chief

At present there are two mechanisms to provide for financing the above improvements. Both are foreign to the Dene. The first is taxes to the Federal Government which would trickle down to the communities in the form of federal or Territorial Government programs. I have earlier indicated how programs such as the Housing Association program have served to colonize northern natives.

The second mechanism is by property tax within each community. Again it is self-evident how such a system is foreign to the Dene and how reinforcing such a system would also serve to undermine the culture and values of the Dene. As far as I am aware, the applicant proposes no other mechanisms for such community improvements. Therefore we are left with a situation where some communities may make some material improvements because of the pipeline, but at the cost of becoming further colonized by an alien political-economic system.

3. Because of the political system presently imposed in Dene communities, the increased problems created by a pipeline for that community will require that the local residents become further dependent on non-Dene experts who are familiar with the imposed system. Thus, instead of becoming more independent, politically and otherwise, the Dene will become more dependent on experts who are familiar with the imposed system. Because the system presently operating is non-Dene, the experts in that system are also non-Dene.

4. The pipeline applicants do not argue that their

Bean, Kurszewski, Cheezie, Barnaby
In Chief

1 project will not create some social problems. The
2 Van Ginkel Report states:

3 "The associated growth would create or intensify
4 some social problems. But with the proposed
5 starting date of pipeline construction there
6 should be enough lead time to permit the
7 institution of protective and ameliorative
8 measures where this is considered necessary.
9 Careful, rational and relevant planning can
10 minimize possible negative impacts."

11 Such problems are likely to
12 be dealt with by increased or new government programs,
13 such as the government may decide. Along with all the
14 other areas with which government will be expected to
15 deal, it is clear that the pipeline will mean a
16 sizeable increase in the bureaucracy of the government.
17 Big developments mean big government. However, I have
18 demonstrated that the present Territorial Government
19 is in reality a colonial institution. Thus what is
20 ultimately being proposed is an increase in the very
21 bureaucracy which is presently colonizing the Dene.
22 Such an increase can only result in the further
23 colonization of the Dene. If a small administrative
24 -- if a small administration is already colonizing the
25 people, increasing the size of the administration will
26 not give the people freedom.

27 These are the more evident
28 ways in which the proposed pipelines would serve to
29 destroy further the Dene culture and ensure the increased
30 colonization of the Dene people.

Bean, Kurszewski, Cheezie, Barnaby
In Chief

1 From reading the social-
2 economic statements of the pipeline companies, there are
3 several more general but no less important facts to point
4 out.

5 First, various authors have
6 pointed out the role that myths serve to rationalize
7 the colonizers activities. Such myths are of course
8 held to be true by those who believe them. They are
9 usually collective myths believed not only individually
10 but serving as part of a colonial ideology. They
11 allow the colonizer to mask and mystify his true inter-
12 ests -- that of control for his own benefit -- under
13 a more acceptable guise.

14 The colonizer can then carry
15 on his function unperturbed by the moral dilemma which
16 might otherwise arise from his efforts to manipulate
17 and control the lives and land of others. The fact that
18 an institution holds colonial myths would be a fair
19 indication that that institution carries out a colonial
20 function.

21 First let me point out a
22 major colonial position shared by the two applicants
23 and the Territorial administration. That is the
24 refusal to recognize the collective rights of the
25 Dene. Nowhere do the applicants refer to the Dene
26 as a collective, as a people with a collective interest.
27 Continually the Dene are treated only as individuals.
28 It is this failure to even acknowledge the existence
29 of the Dene as a distinct people which is the ultimate
30 in contempt for the Dene. Not only do the applicants

Bean, Kurszewski, Cheezie, Barnaby
In Chief

1 not state whether or not the Dene have political
2 rights, they do not even entertain the possibility.
3 The pipeline companies thus never deal with the issue
4 of the Dene to be a self-determining people. They do
5 not even acknowledge the right of the Dene to exist,
6 self-determining or otherwise.

7 Given then that the political
8 rights of the Dene as a people are ignored, what
9 assumptions are made about the original inhabitants
10 of the Mackenzie Valley? The pipeline applications
11 appear to include the following colonial myths:

12 1. The myth that native culture is static and
13 unchanging. Any consideration that Dene culture might
14 evolve and change to cope with the present reality is
15 unforeseen. Instead, the argument goes that Dene
16 culture is static -- it consists of trapping, hunting,
17 and living off the land in a more or less primitive
18 fashion. The argument proceeds that change is normal
19 and natural and by implication Dene culture is less than
20 normal. Therefore the applicant is justified in impos-
21 ing change on the Dene.

22 The myth of a static native
23 culture obviously serves to allow the colonizer to
24 proceed with his activity with a good conscience; he is
25 only creating the conditions of reality in a culture which
26 he sees as not being able to cope. Such a myth becomes
27 self-fulfilling. By not allowing a people to evolve
28 the mechanisms to deal with the here and now, the
29 culture is in fact degraded and static.

30 The fact, of course, is that

Bean, Kurszewski, Cheezie, Barnaby
In Chief

what is at issue is not whether or not native culture will change but who controls that change. Will the changes in Dene culture be a form of internal evolution; that is self-determination, or externally imposed forced change into which the Dene must fit?

2. The second pervasive myth is that full employment equals freedom for self-determination. Slaves in the pre-Civil War South were fully employed, but they were still quite colonized. Higher wages would have done little to give them more freedom. Just because a person is employed, even at a well-paying job, does not of itself guarantee that that individual is free. Just because a people are employed does not guarantee that the people are self-determining. Again the issue is who controls the employment. Who decides what the job is and what purpose it will serve? If the Dene end up working for the non-Dene in pursuit of non-Dene interests, then it is difficult to classify such a situation as the self-determination of the Dene.

3. The third myth is somewhat tied to the second. It is the myth that material well-being equals freedom or fulfillment. While western society appears to be questioning this myth, it is very much alive and well in the north. In discussing the impact of the pipeline on the communities, the Van Ginkel Report states:

"The physical aspect of a community is used as a measure of the quality of life."

(QUALIFICATIONS & EVIDENCE OF W. BEAN MARKED
EXHIBIT 573)

1
2 Bean, Kurszewski,
3 Cheezie, Barnaby
4 In Chief

5 Does the applicant really
6 believe that the quality of life in the Dene community
7 can be measured by the size, number and condition of
8 the buildings, roads, water and sewage lines? What
9 about other verifiable factors such as rates of alcoholism
10 or suicide? What about indicies such as use of native
11 language, participation in political process or the
12 amount of leisure time available?

13 Arctic Gas states that:

14 "....the new economic opportunities associated with
15 the proposed pipeline and related development can
16 be expected to reduce economic disparities, to
17 improve social facilities and as a consequence, to
18 broaden political consciousness and the opportunity
19 for northern residents to participate in the
20 decision making process."

21 The applicant is asserting a
22 direct relationship between economic change and political
23 consciousness or between material well-being and self-
24 determination.

25 Again, it is a variation of
26 the "money brings happiness" myth. The general
27 definition of political consciousness is an awareness
28 of and action in one's true interests. At the
29 collective level, it is an awareness of an action in
30 the collective interest. The applicant is suggesting
31 that economic opportunity (specifically jobs) increase
32 one's awareness of what is or what is not in one's
33 political interest. In fact, no such connection exists.

Bean, Kurszewski
Cheezie Barnaby
In Chief

Economic opportunity is neither a necessary nor a sufficient condition for political consciousness. Economic change is not of itself decolonizing. There is in fact a school of thought which holds the opposite view that relative lack of material wealth is more likely to support the development of the awareness of one's true interests.

In any event, it is obviously a myth the material well-being is the equivalent of self-determination or freedom.

4. A fourth myth which is not itself colonial but can be seen to be served colonial interests when applied to the Dene in this particular setting is that negative social impact is merely opinion and therefore not on the same level of importance as scientific fact.

The Van Ginkel report states

"In terms of the social impact of the decision to build, the conclusions are, of necessity, subjective."

It appears, however that only the negative impacts of a pipeline are deemed to be subjective. No such conditions are applied to statements such as:

"Friction between social and ethnic groups can be reduced by ensuring that employment in income is equally available to all groups and that housing, community facilities and services are equal for all."

or

"Jobs and income are the only solution for poverty."

1
2 Bean, Kurszewski,
3 Cheezie, Barnaby
4 In Chief

5 The stance thus seems to be
6 that views which support the pipeline are facts, views
7 which disagree are opinions. By relegating the opposing
8 views to the status of "subjective opinions" an attempt
9 is made to soften the harsh truth that the applicant's
10 proposal in the end would further colonize the Dene.

11 5. The last colonial myth
12 is that of unilinear cultural evolution or the idea
13 that there is only one road to progress. Ironically,
14 this road just happens to lead to the same lifestyle
15 as the colonizer and places him in a position of
16 believing in himself as a higher form of evolution than
17 that of the colonized. For the Dene, this myth states
18 that the only way to progress is to become part of the
19 capitalistic wage economy system, controlled by the
20 multinationals.

21 The pipeline applicants state
22 that the Dene have only one choice, either an essentially
23 pre-contact way of life or to work for the multinationals.

24 In truth, it is a false view
25 to suggest that the only route to modernization is to
26 directly or indirectly work for a multinational corpora-
27 tion. Such a view is not far short of the myth of
28 Manifest Destiny -- the idea that the colonizer is
29 embarked on the God given task of upgrading the heathens.
30 God is on the side of the colonizer and wants everyone
31 to lead a way of life like the colonizer. All other
32 ways of life are inferior.

33 Surely the truth is that there
34 are alternatives. In truth, there is an alternative

Bean, Kurszewski,
Cheezie, Barnaby
In Chief

which is the Dene themselves developing their own economy as they see fit. An alternative where the political rights of the Dene to collectively decide for themselves would be recognized, rather than degraded and undermined. That is the land claim of the Dene. A claim to their right as people to evolve and develop their own institutions to deal with present and future reality. Surely such an alternative is at least as much a part of progress as that which the pipeline applicants propose.

It becomes obvious from recognizing the present colonial nature of the Territorial Administration and the colonial nature of the applications for massive development of the Dene homelands, that the political rights of the Dene could not be protected should such development begin prior to a satisfactory settlement of the land claims.

The Territorial Administration and the pipeline applicants seek to colonize the Dene. The Dene have stated their right not to be a colonized people. Regardless of any other conditions, Mr. Commissioner, unless there is first a full recognition of the right of the Dene to decolonize themselves, projects such as the proposed pipeline will only serve to further colonize the Dene.

If the interests of the Dene are to be protected, then the land claim of the Dene, that is, the right of the Dene not to be a colonized people must be recognized first before development begins.

1 Bean, Kurszewski,
2 Cheezie, Barnaby
3 In Chief

4 MR. BELL: The summaries of
5 the witnesses' testimony and the appendices thereto
6 have been filed as exhibits, as has the complete text of
7 Mr. Bean's evidence and a copy of the study on which it
8 is based.

9 MR. SIGLER: I'd like to
10 raise an objection to certain exhibits going as evidence
11 before the Inquiry. Exhibits to Mr. Bean's written
12 testimony, two items of them. One being what's reported
13 to be letter from the Commissioner of the Northwest
14 Territories to the Minister dated October 8, 1971. That
15 is not signed and is not shown as being official at all.
16 The other being -- going in as evidence what's reported
17 to be a memo from the Commissioner to the Director of
18 the Department of Local Government dated December 12th,
19 1975.

20 The only reference is that is
21 a copy of something that was published in a local news-
22 paper. Now, my position isn't to defend the Department
23 of Local Government -- the Territorial Government, but
24 merely that this Inquiry is attempting to determine what
25 the government policy is towards local government, should
not get it from such sources as this, unless there's
further proof as to what the exhibits purport to be
actually are those things.

26 At a meeting of Counsel last
27 evening, I specifically raised the question with Mr.
28 Scott as to what limits there were on evidence going in
29 before this Inquiry and he stated to me that there were

Bean, Kurszewski,
Cheezie, Barnaby

limits on what could properly go in as evidence.

I submit that these two items
go beyond the proper rules of evidence before an Inquiry
such as this.

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Bean, Kurszewski,
Cheezie, Barnaby

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2 MR. SCOTT: Mr. Commissioner,
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4 Can I make the suggestion -- I would generally agree with
5 Mr. Sigler that a letter that is unsigned -- I haven't
6 seen the letter by the way, but a letter that is
7 unsigned might not be an appropriate exhibit and
therefore what I would propose is that I should take
8 copies of the disputed -- first of all, that letters
9 should be introduced as an exhibit because they're part
10 of a paper though perhaps no weight is to be given to
11 them if they're not signed, but that I will take the
12 responsibility of writing the Commissioner's office to
13 ask if there is anything inaccurate about those letters
14 and of course, if he asserts that they are not his
15 letters, then they will not be given much weight.

16 It seems to me that that
17 is the way to deal with this to be sure that the
18 letter is not put forward, that the Commissioner had
19 nothing to do with.

20 MR. SIGLER: My concern, sir,
21 is say not to defend the Department but it is important to
22 my client, to know what government policy is towards
23 local government and we want to make sure that we're
24 dealing with what actually is their policies, not what
25 may be published in a newspaper as being their policy.

26 THE COMMISSIONER: Well no,
27 you are entitled to raise that, Mr. Sigler, because you
28 represent the municipalities, and I think that we should
29 accept Mr. Scott's suggestion and proceed in that way.
30 Is that all right with you, Mr. Bell?

Bean, Kurszewski
Cheezie, Barnaby

1 MR. BELL: Mr. Scott's
2 suggestion is very reasonable.

3 THE COMMISSIONER: Am I to
4 understand that you are going to cross-examine this
5 panel now or is the week at an end?

6 MR. SCOTT: Well, Mr. Commis-
7 sioner, I'm a southerner and my plane doesn't leave
8 until 9:30 so I have nothing to do until then but it
9 may be that Mr. Sigler and Mr. Bayly and you, sir, and
10 Mr. Bell, will have other things to do.

11 THE COMMISSIONER: Well, what
12 time is it? If you like, just take ten seconds to
13 confer among yourselves and then let's decide whether --

15
16 MR. SCOTT: Mr. Commissioner,
17 Mr. Sigler would normally go first if Mr. Bayly is not
18 here and I think his view, as it would be mine, if it
19 is not inconvenient for the panel to come back in our
20 next day that we would prefer to postpone the cross-
21 examination until that day.

22 THE COMMISSIONER: Did you
23 want to confer with the panel, Mr. Bell?

24 MR. BELL: Perhaps I should.
25
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27

The situation
28 appears to be this, Mr. Commissioner, that it might not
29 be possible to reconvene this panel on exactly the
30 26th of April when we reconvene. They're willing to

Bean, Kurszewski,
Cheezie, Barnaby

1 be cross-examined at this point and to be recalled on a
2 mutually acceptable date if cross-examination is not
3 completed. I think the panel should be cross-examined
4 as a whole. I think, Mr. Bean has indicated to me that
5 he would prefer to have his colleagues with him.

6 MR. STEEVES: I didn't
7 understand what Mr. Bell was saying. I thought he
8 was saying first of all that they couldn't be brought
9 together at one time, but he would prefer that they all
10 be cross-examined at the same time. Am I right in that?

11 MR. BELL: I said they couldn't
12 be brought together on the 26th of April.

13 MR. STEEVES: Oh, sorry.

14 MR. BELL: But at some other
15 date they may be brought together at one time.

16 THE COMMISSIONER: Well, the --

17 MR. SCOTT: Mr. Commissioner,
18 wouldn't it help if I took 5 minutes with Mr. Bell to
19 see what we can work out?

20 THE COMMISSIONER: All right,
21 take five minutes with all counsel and just see how
22 long this is going to take if cross-examination
23 proceeds.

24 (PROCEEDINGS ADJOURNED)

25 (PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

26 MR. SCOTT: The situation is
27 that Mr. Barnaby cannot come back at a convenient time.
28 He having to earn his livelihood somewhere else, and so
29 that anybody who has questions of him is to ask them
now. The other three members of the panel, two of whom

Bean, Kurszewski
Cheezie, Barnaby
Cross-Exam by Sigler

1 will be engaged the next week of our hearing organizing
2 a community hearing will come back on the second week
3 of our hearing; that is, on the Monday or Tuesday of
4 the second week of the next round of formal hearings and
5 I gather that's satisfactory to all counsel. So perhaps
6 I should begin by, as Mr. Bayly isn't here, asking Mr.
7 Sigler if he has any questions of Mr. Barnaby.

8 CROSS-EXAMINATION BY MR. SIGLER:

9 Q Thank you, Mr. Scott.
10 Mr. Barnaby, beginning on page 3 of your written
11 evidence, you describe your frustration with the
12 budgetary system of the Territorial Government --
13 Territorial Council goes through, that you are a part of
14 when you are on the Territorial Council.

15 Then, you go on, I believe,
16 it's fair to say and describe what you see as the failings of
17 the Territorial Government and the Territorial Council
18 system that we have now in the north. I would like you
19 to go further than that and tell the Inquiry what you
20 see, first of all, that the budgetary process should be,
21 that the Territorial Council should go through to get
22 funds from the Federal Government, and secondly, what
23 form of Territorial Council we should have. I would
24 like you to be as specific as you can.

25 WITNESS BARNABY: Well, I can
26 tell you what is wrong with it. I can't give you no
27 positive solution. That would have to be brought up
28 with a lot of people, I guess.

29 Q My question wasn't what --
30 you have already told the Inquiry what was wrong with it.

1 Bean, Kurszewski,
2 Cheezie, Barnaby
3 Cross-Exam by Sigler

4 I want you to tell me what the solution is.

5 A You can't ask me to
6 come up with solutions. I'm just one guy in the whole --
7 Q You don't have any
8 solutions?

9 A Well, like I said, I
10 could just tell you what is wrong with it.

11 MR. SIGLER: Thank you. I
12 have no further questions.

13 A Well, well --
14 THE COMMISSIONER: Go ahead.
15 A Well, I could -- the
16 whole thing should start right from the communities from
17 the people, what they find important. Like I think it
18 was brought up there in the talk about local
19 government that they find garbage and sewage and
20 roads like that important. But from the people's point
21 of view, there is -- we have different things that are
22 important to us. We concern ourselves with each other,
23 with looking at the needs of each other, not the needs
24 of the community, you know, not the needs of the
25 physical part of the town but the human beings in it.

26 So, if we had the money
27 we wouldn't spend it on 3,000 white people trying to
28 tell us what to do, we would spend it on each other.
29 We wouldn't pay nobody to administrate. We would spend
30 it on the positive part of doing what we feel is good
31 for ourselves.

32 MR. SIGLER: If we had the

Bean, Kurszewski
Cheezie, Barnaby
Cross-Exam by Sigler

1 money -- what kind of money are you talking about?

2 A Well, the budget, the
3 money that is being wasted now in the Territories, the
4 taxpayers' money from the south. You know, everybody is
5 kicking about it and you know, kicking about
6 bureaucracy spending money in the south. Now, they
7 got a building of a bureaucracy here in the north too,
8 you see, the same damn thing, you know. Nobody asks
9 the people. We have more common sense than that.

10 Q You say, you would like
11 to see a system that the people in the north created
12 themselves?

13 A Yes. You know, we
14 like I tried to bring out, we try to make decisions
15 everybody for himself and accept the responsibility;
16 we don't hire somebody to administer a program. We
17 know what we want. We just do it for ourselves.

18 Q You don't have any
19 specific systems in mind yet when you say that -- you
20 just go so far as to say that a system has to be created
21 by the people in the north?

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Bean, Kurszewski, Cheezie, Barnaby
Cross-Exam by Sigler

1 A Yes, to cope with what's
2 coming, I guess. Our own ways have really been
3 corrupted right now and we should straighten up
4 our own house, I guess.

5 Q Now, in your paper you
6 have referred to the Dene land claim . I wonder if
7 you could tell the Inquiry in more detail what
8 you see as the nature and extent of Dene land claim ?

9 A I don't understand that.
10 You'll have to make it more simple, I guess.

11 Q For example, how much
12 land is being claimed when you are referring to the
13 Dene land claim? Are you talking about the whole
14 Northwest Territories?

15 A You already know that
16 we claim 450,000 square miles. I don't know, what
17 more do you want?

18 Q You're referring then
19 to the land covered by the caveat?

20 A Well, that's as far as
21 we've gone right now.

22 Q Well, is it -- are you
23 saying it will go further than that then?

24 A It's up to the people.
25 You know, you're trying to trap me into making a state-
26 ment that will decide something. I can't do that.
27 These things all come out by the people meeting together

28 Q So are you saying you
29 will support it whether it's the 450,000 square miles
30 covered by the caveat, or whether it's the whole

Bean, Kurszewski, Cheezie, Barnaby
Cross-Exam by Sigler
Cross-Exam by Scott

1 Northwest Territories, or whether all of Western
2 Canada?

3 A We have to be reasonable,
4 we can't, you know -- I mean we know what lands we've
5 always used. We don't go travelling all over down in
6 Southern Canada or all over. We have our own lands that
7 we've used traditionally and it's what -- that's what
8 the claims is based on.

9 Q So you'd say it would
10 be limited to the traditional areas.

11 A Yes.

12 Q That the people occupied.

13 A Yes.

14 MR. SIGLER: I have no further
15 questions, sir.

16 MR. SCOTT: Mr. Hollingworth?

17 MR. HOLLINGWORTH: I have no
18 questions.

19 MR. SCOTT: Mr. Steeves?

20 MR. STEEVES: I have no
21 questions.

22
23 CROSS-EXAMINATION BY MR. SCOTT:

24 Q Mr. Barnaby, I've got one
25 question and it's about how you decide things, and let's
26 take as an example the highway that one of the panel
27 talked about coming into Fort Smith. Do you know
28 the highway that was talked about?

29 A M-hm.

30 Q To Fort McMurray. Well

Bean, Kurszewski, Cheezie, Barnaby
Cross-Exam by Scott

1 now, Fort Smith is a town that is 60% Dene and 40%
2 white, is that right? More or less.

3 A Well, I'm not from Fort
4 Smith.

5 Q Oh, I'm sorry.

6 THE COMMISSIONER: Mr. Barnaby
7 is from Fort Good Hope.

8 MR. SCOTT: I'm sorry, sir, I
9 thought you were from Fort Smith and the question
10 doesn't apply to you, and perhaps -- well, let's take
11 Good Hope as an example. If someone wanted a highway
12 to come into Fort Good Hope, and the community was
13 wanted to decided about it, how do you think they would
14 do it?

15 A Well, I have to give
16 you an example first. The highway stopped at Wrigley.

17 Q I know.

18 A We couldn't, you know,
19 if we wanted a highway we have to go to Wrigley, to
20 Norman Wells, Fort Norman, all over the place.

21 Q Well, let's take this
22 example. Supposing the Territorial Government or the
23 Federal Government come along and say, "we're thinking
24 of putting in an airstrip, a new airstrip."

25 A They are.

26 Q They are? All right.

27 All right, well that's a good example then, and the
28 people begin to hear about this, how do you think the
29 people of Fort Good Hope should decide whether they
30 want that airstrip or not?

Bean, Kurszewski, Cheezie, Barnaby
Cross-Exam by Scott

1 A Well, it's being talked
2 about slowly now within the whole community. What we
3 are talking about is the need first of all, if it don't
4 make sense to us to have a large airport, well we
5 probably wouldn't support it.

6 Q And when you say it's
7 being talked about, is it being talked about from house
8 to house, among friends, or are there any meetings?

9 A Well, no meetings yet,
10 it's just being talked about house to house right now.

11 Q All right. Well now after
12 it's been talked about house to house, what will happen
13 next?

14 A Well, if there is nobody
15 pushing it it will probably die right there.

16 Q Let's say there's
17 someone pushing it, will there be a meeting?

18 A Oh yes, for sure, yes.

19 Q And what happens at the
20 meeting, it's talked about again, is it?

21 A Yes.

22 Q And then what happens
23 at the end of the meeting?

24 A Well, it will probably
25 be talked about again, if there is, you know, if there
26 is strong opposition to it well then it starts a
27 battle there.

28 Q And how is the battle
29 decided in the meeting?

30 A Well, battle's just

Bean, Kurszewski, Cheezeie, Barnaby
Cross-Exam by Scott

1 started, you know you don't decide what to do, you
2 just oppose it and use whatever you have to.

3 Q I see, and what -- maybe
4 this has never happened, but what would happen if there
5 were some on one side and some on the other?

6 A Well, call for meetings,
7 I think. The people usually stick together, they all
8 see the same thing. I think when it's talked about
9 it's talked about in terms of people, human beings
10 in that community and little savings here and there,
11 so it comes out that decisions are, you know, decisions
12 are pretty well the majority of the town.

13 MR. SCOTT: All right, thank
14 you very much. I apologize that I thought you were
15 from Fort Smith, but that's not so bad either, eh?
16 Those are all my questions, sir.

17 MR. STEEVES: I'm sorry, I
18 didn't hear what the witness said at the end. Did he
19 say that decisions were made by the majority of the Town?

21 THE COMMISSIONER: No, I think
22 he said that the majority of decisions are worked
23 out in that way. Did I understand you?

24 A Yes, most people will
25 probably -- we don't stop and vote on something. We
26 talk about it till everybody agrees to it, you
27 know, one way or the other.

28 Q Did I understand you,
29 Mr. Barnaby, to say that the traditional way of
30 working out a problem is to discuss it until everybody

Bean, Kurszewski, Cheezie, Barnaby
Cross-Exam by Scott

1 agrees, until a consensus is reached? I'm not trying
2 to use big--

3 A Yes, we don't stop half-
4 way if somebody asks for a vote.

5 THE COMMISSIONER: Well, I
6 think that's what I understood. I didn't understand
7 this agreement among counsel, but where are we now?

8 THE SCOTT: The three members
9 of the panel will return the second week of formal
10 hearings next.

11 THE COMMISSIONER: All right.

12 (WITNESSES ASIDE)

13 THE COMMISSIONER: So we
14 adjourn then until next week -- tomorrow is Good
15 Friday and next week we are not sitting and we return
16 Monday, a week Monday:

17 MR. SCOTT: Yes sir.

18 THE COMMISSIONER: Well, members
19 of the panel, thank you very much. I understand we'll
20 see three of you again, Mr. Bean, Mr. Kurszewski, and
21 Mr. Cheezie; but thank you, Mr. Barnaby for coming.
22 I understand you won't be coming back and we all
23 appreciate the presentation you made and the discussion
24 we must had with you. It was very helpful.

25 So ladies and gentlemen, we'll
26 adjourn then till a week Monday at one o'clock and
27 we'll continue with the Brotherhood's evidence.

28 (PROCEEDINGS ADJOURNED TO APRIL 26, 1976)

347
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Mackenzie Valley pipeline inquiry:
TITLE
Vol. 144 April 15, 1976

| DATE DUE | BORROWER'S NAME |
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347
M835
Vol. 144

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MACKENZIE VALLEY PIPELINE INQUIRY

Government
Publications

IN THE MATTER OF APPLICATIONS BY EACH OF

(a) CANADIAN ARCTIC GAS PIPELINE LIMITED FOR A
RIGHT-OF-WAY THAT MIGHT BE GRANTED ACROSS
CROWN LANDS WITHIN THE YUKON TERRITORY AND
THE NORTHWEST TERRITORIES, and

(b) FOOTHILLS PIPE LINES LTD. FOR A RIGHT-OF-WAY
THAT MIGHT BE GRANTED ACROSS CROWN LANDS
WITHIN THE NORTHWEST TERRITORIES

FOR THE PURPOSE OF A PROPOSED MACKENZIE VALLEY PIPELINE

and

IN THE MATTER OF THE SOCIAL, ENVIRONMENTAL AND
ECONOMIC IMPACT REGIONALLY OF THE CONSTRUCTION,
OPERATION AND SUBSEQUENT ABANDONMENT OF THE ABOVE
PROPOSED PIPELINE

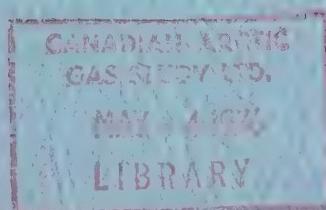
(Before the Honourable Mr. Justice Berger, Commissioner)

Yellowknife, N.W.T.,

April 26, 1976.

PROCEEDINGS AT INQUIRY

Volume 145



APPEARANCES:

2 Mr. Ian G. Scott, Q.C.,
3 Mr. Stephen T. Goudge,
3 Mr. Alick Ryder and
4 Mr. Ian Roland for Mackenzie Valley Pipeline
Inquiry;

5 Mr. Pierre Genest, Q.C.,
6 Mr. Jack Marshall,
6 Mr. Darryl Carter and
7 Mr. J.T. Steeves for Canadian Arctic Gas Pipeline
Limited.

8 Mr. Reginald Gibbs, Q.C.,
8 Mr. Alan Hollingworth and
9 Mr. John W. Lutes for Foothills Pipe Lines Ltd.;

10 Mr. Russell Anthony,
10 Prof. Alastair Lucas and
11 Mr. Garth Evans for Canadian Arctic Resources
Committee;

12 Mr. Glen W. Bell and
13 Mr. Gerry Sutton for Northwest Territories
Indian Brotherhood, and
14 Metis Association of the
Northwest Territories;

15 Mr. John Bayly and
16 Miss Leslie Lane for Inuit Tapirisat of Canada,
and The Committee for
Original Peoples Entitle-
ment;

17 Mr. Ron Veale and
18 Mr. Allen Lueck for The Council for the Yukon
Indians;

19 Mr. Carson Templeton for Environment Protection
Board;

21 Mr. David H. Searle, Q.C. for Northwest Territories
Chamber of Commerce

22 Mr. Murray Sigler for The Association of Municipali-
ties;

24 Mr. John Ballem, Q.C. for Producer Companies;

347
4135
Vol. 146



1

I N D E XPage

2

WITNESSES FOR INDIAN BROTHERHOOD:

3

Roger ROLFE
 Meyer BROWNSTONE
 Tim DRAIMIN
 Tony CLARKE
 Father Lou MENEZ
 Father William F. SMITH

6

- In Chief 22081
- Cross-Examination by Mr. Hollingworth 22153
- Cross-Examination by Mr. Steeves 22160
- Cross-Examination by Mr. Scott 22173

8

9

10

11

12

13

14

EXHIBITS:

15

574 Qualifications & Evidence of T. Clarke,
 W. Smith, T. Draimin, L. Menez 22091

16

575 Qualifications & Evidence of M. Brownstone
 and R. Rolfe 22091

17

576 "Falconbridge: Portrait of a Canadian Mining
 Multinational" by J. Deverall 22156

18

577 "Documentary Report on Conditions of
 Indian Peoples in Brazil," November 1974 22156

19

578 "Brazil '75" 22156

20

579 "Native People in the Brazilian Amazon..." 22156

21

580 "Survey of Mineral Resource Extraction
 in Brazil" 22156

22

581 "Corporate Interests in Natural Gas
 Development North of 60" by L. Pratt 22156

23

582 Annual Report of Brascan, 1974 22156

24

583 Annual Report of Brascan, 1973 22156

25

584 "A Church of the Amazon in Conflict with
 the Large Landholders & Social Marginaliza-
 tion" 22156

26

27

28

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30

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
In Chief

Yellowknife, N.W.T.,

April 26, 1976.

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

MR. SCOTT: Mr. Commissioner,
I wonder if I could deal with two matters. First of all
I would appreciate it if I could see counsel or other
participants appearing at the hearing for five minutes
at the end of the day. That's the first item.

The second item is, under our participation rules I am advised that the Mental Health Association of the Northwest Territories wishes to become a participant and will shortly file a list of documents, as the rules require. They will be represented by Mrs. Jo MacQuarrie, who is here sitting at the second counsel table. That's all I have. Mr. Bell.

MR. BELL: Mr. Commissioner,
I'd like to present to you our next panel. Starting
on the far right is Mr. Roger Rolfe. Next to him is
Mr. Meyer Brownstone. Next to him is Mr. Tim Draimin;
Mr. Tony Clarke; Father Lou Menez; and Father Bill Smith

ROGER ROLFE, sworn,
MEYER BROWNSTONE, affirmed,
TIM DRAIMIN, sworn,
TONY CLARKE, sworn,
FATHER LOU MENEZ, resumed,
FATHER WILLIAM F. SMITH, sworn:

DIRECT EXAMINATION BY MR. BELL:

Q If I could start with you,
Mr. Rolfe. Your present position is the Education
Co-ordinator for Oxfam-Canada (Ontario Region).

WITNESS ROLFE: That's correct.

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
In Chief

Q You have a B.A. from the University of Toronto and you did post-graduate work in development studies at the University of Toronto.

A Right.

Q In 1974 you were on the research and education staff of the Development Education Library Project.

A Yes.

Q That was in Toronto.

A Right.

Q And in 1975 you joined Oxfam-Canada as the education co-ordinator and you're responsible for liaison with the Indian Brotherhood of Northwest Territories.

A That's correct.

Q Moving to you, Mr.

Brownstone, you are the National Chairman of Oxfam-Canada.

WITNESS BROWNSTONE: Yes.

Q And it's in that capacity
that you appear here today.

A Yes.

Q You are also a professor in the Department of Political Economy at the University of Toronto, and a consulting professor in the Department of Environmental Studies at York University.

A Yes.

Q You have a Bachelor Of
Science and a Master of Science and a Ph.D.

A Yes.

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
In Chief

Q And your Ph. D. was in
public administration and economics.

A Right.

Q Moving to your professional
experience, from 1960 to 1964 you were the Deputy Minister
of the Department of Municipal Affairs for the
Government of Saskatchewan.

A Yes.

Q In addition, in 1961 you
were the research co-ordinator of Resources for
Tomorrow Conference, dealing with the Agriculture Section.

A Right.

Q And in 1962 you were
a United Nations advisor on local government to the
Government of Jamaica.

A Yes.

Q From 1964 to the present
you've been a professor in the Department of Political
Economy at the University of Toronto.

A Yes.

Q From 1964 to 1968 you were
the research director of the Royal Commission on
Bilingualism and Biculturalism.

A Yes.

Q In 1969 you were appointed
to your present post as professor in the Department of
Environmental Studies at York University.

A Yes.

Q In 1970 you were a member
of the Tanzania Presidential Commission on Decentralization.

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
In Chief

1 A Yes.

2 Q And from 1970 to 1973
3 you were a consultant to the Government of Manitoba
4 on Urban Government Planning & Northern Development.

5 A Yes.

6 Q And in 1975 you were
7 consultant to the Government of British Columbia on
8 health.

9 A Yes.

10 Q You are the chairman of
11 the Canadian Council on Urban & Regional Research.

12 A Yes.

13 Q A post which you've held
14 since 1972.

15 A Right.

16 Q You are a member of the
17 Canadian National Committee of the United Nations Confer-
18 ence on Human Settlements.

19 A Yes.

20 Q And you've held various
21 executive positions with Oxfam-Canada since 1971.

22 A Right.

23 Q You are also the author of
24 the publications listed on page 2 of your witness resume.

25 A Yes.

26 Q Moving on to you, Mr.
27 Draimin, your present position is as an independent
28 researcher.

29 WITNESS DRAIMIN: That's correct.

Q You have a B.A. from the

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
In Chief

University of Toronto.

A Yes.

Q From 1973 to 1975 you
were the research director of the Latin American Working
Group.

A Yes, I was.

Q Would you explain briefly
what that group is?

A The Latin American Working
Group is a private educational organization founded
ten years ago to try to --

THE COMMISSIONER: I can barely
hear you. Will you move that microphone a little
closer?

A The Latin American
Working Group is a private educational organization
founded ten years ago to attempt to create a broader
understanding among the Canadian public of the social,
political and economic issues affecting Latin American
states.

MR. BELL: Q You are also a
member of the Ontario Regional Board of Oxfam-Canada.

A That's correct.

Q And a member of the
Projects Advisory Committee of that organization.

A Yes.

Q And you are a consultant
to the Task Force on Churches and Corporate Responsibility.

A That is correct.

Q You are the co-author or
author of the publications listed in your resume.

A That is correct.

Pofco, Brownstone, Draimin,
Clarke, Menez, Smith
In Chief

1 Q Mr. Clark, you are
2 presently the Director of the Social Affairs Department
3 of the Canadian Catholic Conference.

4 WITNESS CLARK: That's correct.

5 Q Could you tell us briefly
6 what the Canadian Catholic Conference is please?

7 A The Canadian Catholic
8 Conference is the National Association of the Roman
9 Catholic Bishops and Cardinals of Canada.

10 Q You have a B.A. in 1966
11 from the University of British Columbia.

12 A That's correct.

13 Q An M.A. in 1969 from
14 the University of Chicago.

15 A Yes.

16 Q A Doctor of Ministry in
17 the -- there's an error in the distributed text. The
18 degree should be D.Mn., I'm informed and that's a
19 degree from the University of Chicago in 1974.

20 A That's correct.

21 Q In 1966 and '67, you were
22 on the teaching staff of the Sorrento center for Human
23 Development.

24 A Yes.

25 Q Could you tell us what
26 that is please?

27 A It was a center in which
28 -- sponsored by the churches in British Columbia where
29 people came together to examine social and economic
30 problems facing them and the ethical questions surrounding

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
In Chief

that.

Q In 1968 -- from 1968 to 1970 you were on the research staff of the Community Renewal Society in Chicago.

A Yes.

Q From 1970 to 1972 you organized and directed the Planning for People Coalition in Chicago.

A That's correct.

Q Could you tell us what those two organizations are, sir?

A The Community Renewal Society was a -- is a Parachurch agency in the City of Chicago which centered in on the problems of urban poverty and racism, and attempted to find ways in which to address those kind of problems.

The Planning for People Coalition was an offshoot from the Community Renewal Society designed to look at the patterns of suburban planning and development and how they were creating -- participating in the creation of urban poverty and poverty in ghetto situations.

Q From 1972 to '74 you were a research assistant in the Social Action Department of the Canadian Catholic Conference and in 1974 you were appointed to your present position.

A That's correct.

Q Father Menez, you're the parish priest in Fort Resolution.

WITNESS MFNEZ: Yes I am.

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
In Chief

1 Q From 1940 to 1942, you
2 engaged in philosophy studies in France.
3

4 A Yes.
5

6 Q From 1944 to 1949 you
7 engaged in theology studies at Solignac in France.
8

9 A That's correct.
10

11 Q In 1949, you were ordained.
12

13 A Yes.
14

15 Q Could you briefly describe
16 your experience since then?
17

18 A From '49 to the present
19 time I've been in the Northwest Territories and I spent
20 first about five years with the Chipewyan Indian along
21 the Snowdrift and Rocher River. Subsequently 12 years
22 with the Eskimos of Bathurst Inlet and Perry Island
23 and then since 1966 I am stationed at Fort Resolution;
24 that would be ten years.
25

26 Q Moving on to you Father
27 Smith, you are at present the Project Officer for the
28 Canadian Catholic Organization for Development and Peace.
29

30 WITNESS SMITH: That's correct.

31 Q Your education began with a
32 Cours classique from 1953 to '57 at the Universite Saint
33 Joseph in Moncton, New Brunswick.
34

35 A Correct.
36

37 Q In 1958 you obtained a
38 B.A. in philosophy from the University of Ottawa.
39

40 A That's correct.
41

42 Q In 1958 and '59 you
43 engaged in philosophy studies in Toronto.
44

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
In Chief.

A Correct.

Q From 1959 to 1962, you
studied theology in Toronto and Washington, D.C.

A That's correct.

Q In 1962, you obtained a
Licence in Sacred Theology from St. Augustine's Seminary
in Toronto.

A Correct.

Q And you were ordained then.

A True.

Q In 1970 you obtained a
B.A. in Communications from Loyola University.

A Correct.

Q In Montreal. Since 1963,
that is from '63 to '71, you engaged in development work
in Brazil in various capacities concentrating on the
Amazon region?

A That's true.

Q From 1969 to '71 you were
Professor of Communications at the Catholic University
of Sao Paulo and Collegio Santa Cruz in Brazil.

A That's true.

Q From 1971 to 1975 you were
Director of Native People's Affairs for the Canadian
Catholic Conference.

A That's true.

Q From 1972 to '74 you were
also Director of the Latin America Department of the
Canadian Catholic Conference.

A Correct.

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
In Chief

Q From 1974 to the present

you held your present position.

A Correct.

Q You were also, for a period of time, from 1972 to '75 the Editor of "The Clearing House."

A Correct.

Q You remain a contributing editor of that journal.

A Correct.

Q You are also the author of several papers on development and native issues in Latin America.

A Correct.

Q You have field experience and study in the countries listed in the witness resume.

A That is correct.

(QUALIFICATIONS AND EVIDENCE OF T. CLARKE; W. SMITH,

T. DRAIMIN, FR. LOU MENEZ MARKED AS EXHIBIT #574)

(QUALIFICATIONS AND EVIDENCE OF MEYER BROWNSTONE AND

ROGER ROLFE MARKED AS EXHIBIT # 575)

Rolfe, Brownstone, Draimin
Clarke, Menez, Smith
In Chief

Q Well, I think we're ready to begin with the evidence, sir, and I'd like to call on Mr. Brownstone to begin.

WITNESS BROWNSTONE: Your honor, may I first say how pleased Mr. Rolfe and I are to be here to assist the Commission in its Inquiry, and if I might also say, without prejudice, how impressed we have been on the conduct of this Inquiry at some distance and we're delighted to be here to join in with it. I can assure you that our organization, Oxfam-Canada, is fully prepared to assist the Inquiry when it begins its tour of the south.

For Oxfam-Canada one of the most critical aspects of the proposed Mackenzie Valley Pipeline is its socio-economic impact on the north. The issues raised by this aspect --

THE COMMISSIONER: Excuse me.

A Sorry.

THE COMMISSIONER: If I can just find this.

MR. BELL: There's a separate brief issued under the name of:

"Meyer Brownstone and Roger Rolfe."

THE COMMISSIONER: I think maybe mine begins with Mr. Hill's.

MR. BELL: I think you have the wrong one then, sorry.

THE COMMISSIONER: Sorry, sir, go ahead.

A Would you like me to begin

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
In Chief

1 again, your honor?

2 THE COMMISSIONER: Yes, if you
3 would.

4 A O.K. For Oxfam-Canada
5 one of the most critical aspects of the proposed Macken-
6 zie Valley Pipeline is its socio-economic impact on the
7 north. The issues raised by this aspect of the Inquiry
8 are vital to northerners. But as well they pose real
9 development alternatives that are increasingly relevant
10 to all Canadians.

11 Oxfam-Canada has been active
12 during the past ten years working with people in the
13 Third World through long-term development projects which
14 have confronted some of the immediate injustices of
15 poverty in their daily lives. Through this direct
16 experience in the problems of development/underdevelopment
17 over a number of years, a perspective for Oxfam-Canada
18 has emerged which has shaped our goals and program in
19 developing nations and in Canada. We are convinced that
20 this experience is directly relevant to the broader
21 issues now before the Inquiry. We welcome this opportunity
22 to outline some of the dimensions of our experience in
23 the Third World and to detail our work in Canada with the
24 Indian Brotherhood of the Northwest Territories. They form
25 the basis for the conclusions that we will attempt to draw
26 for the Inquiry.

27 A more complete understanding
28 of our perspectives on development and underdevelopment
29 has emerged in Oxfam-Canada only after several years of
30 intensive review of our practical experience in inter-

Rolfe, Brownstone, Braimin,
Clarke, Menez, Smith
In Chief

1 national relief work and long-term development projects.
2 As an active participant in the international Oxfam
3 movement, we have had available to us a wealth of inter-
4 national experience gained over three decades. Our
5 project work in the Third World has been supported by the
6 expertise of a network of field staff deployed by Oxfam
7 and located in various countries and regions of Latin
8 America, Asia and Africa. The field workers have had a
9 direct insight into the particular dimensions of poverty
10 and underdevelopment in particular regions. Their
11 reports as well as Oxfam-Canada's communications with the
12 project holders themselves form the foundations for our
13 understanding of the value and the limitations of our work
14 in seeking to challenge the structures which sustain
15 underdevelopment.

16 Since its emergence after the
17 Second World War, Oxfam has undergone a gradual tran-
18 sition from an agency concerned with charity-relief
19 work to one whose main concern is development. This
20 transition has been reflected in Oxfam-Canada since
21 its founding in 1965. While in 1966 almost all disburse-
22 ments were made for charity relief work to provide food
23 and immediate support for the most seriously affected
24 victims of poverty in the Third World, by 1970 only 36%
25 of our funds were allocated for these purposes. (This
26 still represents a significant allocation of funds
27 since our income has increased sixfold in the same
28 period). Our major allocations by this time were for
29 long-term development projects with one or more agri-
30 cultural, education, family planning, health and nutrition

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
In Chief

1 components. As such, this change in approach from
2 treating the symptoms of poverty to a conscious attempt
3 to alter the conditions which produce malnutrition,
4 hunger and disease in the Third World broadened our
5 awareness of the social and political implications of
6 all aspects of our work. Thus while we continued to
7 provide short-term relief support in response to situa-
8 tions of immediate disaster and emergencies, we have
9 made an attempt to allocate this relief in a manner that
10 increases the potential for long-term development.

11 Our Policy Paper on Inter-
12 national Development in 1972 challenges the more
13 traditional understanding of this term "development"
14 and poses an alternative conception. I'm quoting from
15 that document now, your honor:

16 "...development amounts to a great deal more
17 than increases in gross domestic product,
18 per capita incomes, per capital railway mileage,
19 etc., and development cannot be left solely in the
20 hands of the economists. The overall aim of
21 development is to bring into being a society
22 in which the available resources are shared by
23 the people on an equitable basis. There are
24 two weaknesses in this definition.

25 Firstly, it is not clear who is to be responsible
26 for bringing about these changes in the society
27 and on this matter there should be no doubt.
28 Secondly, to the materialistically minded west-
29 erner, the term 'resource' too often suggests
30 only a material and static thing, whereas the

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
In Chief

1 term encompasses people in all their variety
2 and especially their culture."

3 In the projects we support,
4 Oxfam-Canada has worked with the poorest sections of the
5 populations in both rural and urban areas in their
6 efforts to realize their aspirations for social justice
7 and greater equality within their own societies. The
8 notion of social justice must be tempered with the
9 recognition that one of the central causes of under-
10 development is the existence of ^{both} indigenous and external
11 elites who use their economic and political power to
12 impose "development priorities" which strengthen their
13 own positions within a developing society. In other
14 words, the poorest sections at the socio-economic
15 margin who daily face the conditions of material poverty
16 also lack the political power to realize their interests
17 in a more just and equitable social order. It is for this
18 reason that Oxfam seeks to support indigenously determin-
19 ed self-help projects that on a long-term basis confront
20 the most immediate conditions of poverty amongst the
21 marginalized and exploited population. By creating the
22 conditions for relative self-reliance, such projects
23 may also develop self-confidence and awareness of the
24 oppressed to assert their long-term interests in the
25 national political, economic and social spheres. Along
26 with this understanding comes a realization that any
27 nationwide amelioration of conditions of poverty requires
28 a thorough going change in social and economic structures
29 that sustain dependency and exploitation.

30 Development projects do not

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
In Chief

1 in themselves generate such structural transformation.
2 What they can do is create awareness of their necessity
3 and offer a model for real alternatives. We shall show
4 later that this perspective is directly relevant to our
5 involvement in the Mackenzie Valley. But first, however,
6 we would like to establish its meaning for our work in
7 the Third World.

8

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Rolfe, Brownstone, Draimin
Clarke, Menez, Smith
In Chief

Our experience in Bangladesh

and India, long an area of concentration for OXFAM, reflects both the importance and the limitations of long-term development projects. Since its initial involvement in relief and rehabilitation following the formation of Bangladesh, OXFAM has worked closely with the Bangladesh Rural Advancement Committee. It has developed programs to promote functional literacy, provide seeds and agricultural implements, assist the formation of cooperative societies and establish field camps to provide medical services.

Important as these programs are for those deriving real benefit from them, we have become increasingly aware of the exploitative and corrupt political context in which they operate. While smuggling of the major export crop, jute, occurs on a massive scale, commodity prices in general rose by 400 percent in 1974 and rice, which is a basic staple, by 240 percent. Nearly half of the rural population are landless or own small uneconomic plots. Unable to maintain a subsistence level of income, the poorer peasant is bound to the wealthy peasant and money-lender to increasing debt in order to purchase the grain he is unable to grow for himself.

This sector of the rural population is the first to be affected by any threat of drought or famine because it is unable to afford the food available on the market. At the same time, the control of land, agricultural labor and rural credit by the elite within Bangladesh imposes social, economic and political

Rolfe, Brownstone, Draimin
Clarke, Menez, Smith
In Chief

obstacles for a program to redistribute land on a cooperative basis. Without redistribution of land the landless and poor can have no secure and independent economic base to sustain them. With control over land and power resting in the hands of others the real needs of those most oppressed, for adequate shelter, nutrition, health and education, can never be met.

In India, we were confronted by similar if not more complex socio-economic and political circumstances. Here our support for FREIA which is the Front for Rapid Economic Advancement of India, involves OXFAM in a number of programs of social and economic change. These emphasize the development of local leadership, aim to foster a sense of social consciousness, and evolve a framework within which the participants can come to understand their immediate circumstances.

In one community, they have organized a cooperative consumer shop which forced down village prices by 20 percent and broke the image of the village notable as an 'all powerful man.' In another community, where landlords controlled all the land and exploited poor farmers and landless labourers, the latter were organized to demand redistribution of government land. Successfully obtaining plots, they have cleared their land, collectively irrigated it, and established a cooperative marketing scheme.

At the same time FREIA realistically points out in their reports that these projects are strongly resisted by village landlords who feel threatened

Rolfe, Brownstone, Draimin
Clarke, Menez, Smith
In Chief

1 by the relative economic self-sufficiency achieved by
2 those involved. They note that the landlords "fear that
3 through providing regular employment to people, these
4 projects would reduce the pressure on land and would
5 cause a demand for higher wages, making the landless
6 independent of the landlords to a certain extent."

7 This experience then has
8 compelled OXFAM Canada to note the complexities of
9 exploitative and dependent relationships between social
10 groups which often are the underlying foundation for
11 the extremities of poverty and affluence in many Third
12 World nations. Our support for those seeking national
13 self-determination and social justice in Southern
14 Africa in the context of former Portuguese colonial
15 regimes and continued racial oppression in Rhodesia,
16 Namibia and South Africa has focused our attention upon
17 the brutal realities of externally oriented development
18 priorities that sustain dependency and exploitation at
a national level.

The organization of Mozambique's economy as a consequence of 400 years of Portuguese colonialism was characterized by the plantation production of export crops and forest cultivation of coffee by African peasants. During the 1960's this externally oriented development involved the construction of a huge hydro-electric project at Cabora Bassa, utilizing South African and British capital to serve the power needs of South Africa and mineral exploitation in Mozambique. Such development, suiting the needs and interests of metropolitan industrial economies, meant

Rolfe, Brownstone, Draimin
Clarke, Menez, Smith
In Chief

for Africans a brutal system of contract labor that compelled them to work at less than subsistence wages on private estates and Portuguese projects. The European monopoly of the commercial agricultural sector and the forced cultivation of export crops for minimal returns reduced the vast majority of African peasants to a bare subsistence level.

The long struggle waged by FRELIMO against the Portuguese regime has succeeded in creating an independent and free Mozambique. The roots of that struggle amongst the masses of rural peasants has meant for Mozambique the elaboration of development priorities that serve the real needs of the vast majority of the population. OXFAM-Canada offered assistance to FRELIMO for the development of their economy in the liberated zones during the war against the Portuguese.

Now as the government of Mozambique, FRELIMO sustains these development priorities by emphasizing the importance of primary education, directly related to the movement's experience in creating a free Mozambique and to the practical needs of rural agricultural development on a cooperative basis.

This contrasts Portuguese colonial education which is oriented towards integrating the African into a Portuguese determined civilization. In encouraging cooperative agricultural development at the village level, FRELIMO has also emphasized the production of food crops for the subsistence of the village as a whole, as well as these and commercial crops for exchange for necessary agricultural implements, seeds,

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
In Chief

1 textiles and so on. In her report to OXFAM in 1973,
2 Janet Mondlane of the Mozambique Institute noted that

3 "The development of production and commerce in
4 Mozambique is essential to the successful growth
5 of a new society, oriented by our determination
6 to free our country from exploitation both internal
7 and external."

8 Based in Tanzania, the
9 Mozambique Institute organized and supported the
10 development of agricultural production, health and
11 education in the liberated zones of Mozambique during
12 the war with the Portuguese.

13 But Portuguese colonialism has
14 left a legacy. The promotion of migrant labor for
15 South African mines and the development of a capital
16 intensive hydro-electric project, though inappropriate
17 to the most immediate needs of the Mozambican people,
18 continues to influence the course of the Mozambican
19 development today. OXFAM-Canada has renewed its
20 commitment both in Mozambique and now Angola to support
21 the continuous struggle to challenge the patterns of
22 exploitative and externally imposed development. We
23 hope in this way to assist in the transformation of a
24 Mozambique by its people from a dependent colonial
25 country , its people exploited by both national and
26 international interests, to a truly independent nation
27 utilizing its own resources in a context of self-
28 reliance and self-determination.

29 This change represents a real challenge
30 and alternative to the massive poverty and inequality that
 Mozambicans have known for several hundred years.

Rolie, Brownstone, Draimin,
Clarke, Menez, Smith
In Chief

The transformation in the nature
and understanding of our work overseas has also been
reflected in the development of our program in Canada.
This program increasingly has come to recognize the
importance of education and political action work.
Public education programs have been developed in the
three regions of Oxfam-Canada in order to broaden the
awareness of Canadians of the dimensions and causes of
poverty, malnutrition and illiteracy in the Third
World. But equally important, the thrust of these
programs has also emphasized the importance of effecting
changes in Canadian Government policy towards the Third
World. Ultimately, such policy changes in Canada's
economic relations with the developing nations can
effect a more significant challenge to the structures that
sustain underdevelopment than relief aid or welfare
oriented development assistance.

Oxfam's education and political action programs have generated a response among Canadians not only because of a humanitarian concern but also because we feel Canadians share a common ground with those seeking social justice in the Third World. Just as powerful external economic elites have distorted development in the Third World, these same elites in the industrial nations have distorted their own economies most prominently through the agencies of global corporations supported by large governments. As a resource hinterland for metropolitan industrial nations, this distortion has also occurred in Canada. The most obvious victims of this process of development have been Canada's

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
In Chief

1 native people as well as the urban and rural poor.
2 Their situation is characterized by those same conditions
3 of underdevelopment that we have experienced in the
4 Third World; and it is for this reason that material and
5 other support for these groups are consistent with Ox-
6 fam's aims and objectives.

7 Oxfam-Canada's involvement with
8 Canadian native people goes back to 1970, the year in
9 which we funded Project Talking Bird . Oxfam paid for the
10 purchase of a small airplane operated under the direction
11 of the Canadian Association in Support of Native Peoples.
12 We also funded some running costs. This plane was used
13 to do initial organization work in both Western and
14 Eastern Arctic communities, especially among the Inuit.

15 The idea was to put isolated
16 native communities in touch with one another. They would
17 then discover that the concerns they had about how
18 modernization was coming to the north, or what place
19 they would have in the future northern society, were
20 concerns that other communities shared. With this know-
21 ledge and communication, native people could begin to
22 assert their right to participate in making decisions
23 which will affect their lives and the lives of their
24 children.

25 Project Talking Bird was
26 especially useful in helping to build local affiliates
27 of the Inuit Tapirisat of Canada in the Eastern Arctic.

28 This initial involvement with
29 Canada's native people in 1970 was motivated by a
genuine humanitarian response to their plight, by a

Rolie, Brownstone, Draimin,
Clarke, Menez, Smith
In Chief

1 concern for their physical and psychological oppression.
2 But this concern was sharpened in the years following
3 in the awareness that the causes of poverty, hunger,
4 malnutrition and so on among native people in Canada,
5 were remarkably similar to the causes underlying under-
6 development in the Third World.

7 Just as the societies and
8 economies of indigenous peoples in the Third World had
9 been disrupted, distorted and weakened during the
10 periods of conquest, colonialism and neo-colonialism,
11 by the intervention of the industrial countries seeking
12 resources for their own interests, so too in Canada the
13 appropriation of land resources by companies, governments
14 and individuals led to the distortion, disruption and
15 eventual destruction of the indigenous economies and
16 societies of Canada's native people. They were pushed
17 aside in the process of nation-building and profit-
18 building, sometimes exterminated, sometimes conquered,
19 more often forced onto reserves and put under the
20 charge of the Federal Government. The colonization of
21 the Third World has had its parallel in this country.
22 What is most unsettling, however, is that this internal
23 colonialism directed at the native people of Canada
24 has not ended, even in the present day.

25 It is in this context that
26 Oxfam-Canada saw that its experience and policies in
27 encouraging development among communities in the Third
World were directly relevant to a similar challenge
among Canadian native people. In the past two years and
in response to requests from native organizations, Oxfam

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
In Chief

1 has again been able to give practical expression to its
2 long-standing concern for native development in Canada,
3 through financial and other support for native peoples'
4 projects.

In 1974 the National Indian Brotherhood sought Oxfam's help to prepare for an International Conference of Aboriginal Peoples. The meeting would bring together Lapps, from Scandinavia, Aboriginals from Australia, Indians from North and South America, Inuit from the Arctic, Bushmen from Africa, and so on. It would bring together representatives from all these groups to exchange information and strategies about their common problems as small peoples trying to survive and develop surrounded by a dominant society of invaders.

In the same year, the Indian Brotherhood of the Northwest Territories also approached Oxfam. They were determined to seek a land settlement in the Northwest Territories different from all previous native land settlements. They sought a continuing role in both the planning and the benefits of developing their ancient northern homeland. The mechanism for ensuring themselves of a place in the future economic, social and political life of Canada's north would be continued ownership of their land. All previous Canadian treaties with native people up to and including the James Bay Settlement, have been instruments for extinguishing aboriginal rights to the land. The result of this extinguishment was that the dominant non-native Canadian society pushed ahead with its own kind of

Rolfe, Brownstone, Draimin,
Clark, Menez, Smith
In Chief

1 development while native peoples became outcasts and pen-
2 sioners.

3 Oxfam-Canada was attracted
4 by several aspects of this proposal put forward by the
5 Dene people. First it was a grass roots movement -- the
6 impetus and demand for this kind of a land settlement
7 came from the communities. The near universal support
8 for such an approach is shown by the response of hundreds
9 of individuals to this Inquiry when it visits native
10 communities.

11 Secondly, the Dene have made
12 a significant break-through in uniting the status,
13 non-status and Metis people of the Northwest Territories.
14 In most parts of Canada treaty Indians keep themselves
15 separated from non-status and Metis people. This division
16 is promoted and encouraged by the policy of our Federal
17 Government which refuses to deal with these groups as
18 one. In the Northwest Territories the Dene made it clear
19 from the start that they sought a settlement for all
20 people of Indian ancestry. So strongly did they make
21 this point that the Federal Government agreed for the first
22 time in modern Canadian history to negotiate with both
23 groups together.

24 Thirdly and lastly, Oxfam-Canada
25 was asked to support only those segments of the Indian
26 Brotherhood's work which the Federal Government had
27 refused to fund.

28 In June of 1975 Oxfam agreed
29 to a project grant of \$140,000 over a two-year period
to fund economic studies related to a land claim

Rolfe, Brownstone, Draimin
Clarke, Menez, Smith
In Chief

1 settlement in the Northwest Territories. Part of that
2 grant will be used to pay for independent analysis of
3 the economic potential of land under claim.

4 The largest portion will fund
5 a series of workshops in which the Dene will develop
6 their own concepts of community-based development.
7 By deciding what kind of development they want, they
8 will be able to work out the specific nature of the
9 land settlement that would be needed to make it
10 possible. In this way they will be sure that development
11 alternatives will be compatible with their own life-
12 style and needs.

13 It is our understanding that
14 this process, which is a critical process, is now well
15 under way within the Brotherhood. But a process by
16 which people themselves endeavor to take control over
17 their own lives and future is necessarily a time-consuming
18 one. To deny the Dene the time they need is to
19 risk serious damage to their future. The Dene position
20 of "no pipeline before a land settlement" is surely a
21 minimal demand which must be respected.

22 Consistent with Oxfam-Canada's
23 desire to develop an educational program around its
24 its major projects, we appointed a full-time staff
25 member in July of 1975 to act as a liaison person
26 between Oxfam and the Indian Brotherhood of the
27 Northwest Territories. The responsibility of the liaison
28 officer has been to examine the situation in the
29 Mackenzie Valley through direct experience in the field
30 and to translate that understanding into an educational

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
In Chief

1 program for southern Canadians in the Province of
2 Ontario. The program began in October, 1975 and continues
3 today.

4 Our involvement in the
5 Mackenzie Valley since 1974 has given Oxfam-Canada the
6 opportunity to analyze the dynamics of development in
7 the region and to articulate with the benefit of our
8 experience elsewhere, what conditions are essential if
9 social equality and justice are to be guaranteed to the
10 Dene of the north. An independent economic base suited
11 to the present capacities of the native people of the
12 Mackenzie Valley and sufficient to provide for both their
13 present and their future development is one condition
14 that is absolutely necessary. The second is a measure of
15 self-determination that will allow the Dene to determine
16 their own development priorities and that will at the
17 same time secure their direct participation in other
18 development decisions within the region.

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Rolfe, Brownstone, Draimin
Clarke, Menez, Smith
In Chief

Land and self-determination

have existed for the Dene throughout most of their history and even in large measure in the present day. They continue to have a land base and the control they have had de facto over this land has allowed them to maintain their economy and the society which is built on it. Government policy and corporate activity has often weakened the integrity of their way of life but the fact that this externally initiated development has been in the past sporadic, rather than comprehensive has given the Dene the space to keep their society together and to avoid the symptoms of social disintegration that have been the fate of native people in southern Canada.

Granted industrial training and employment programs and government education systems, the Dene have been marginalized from the development process in the Mackenzie Valley. It has been their fortune that thus far, this process has not engulfed the north, that industry and government have ignored this last frontier sufficiently to leave a margin, enough for the Dene to sustain themselves on their own resources.

The future however holds a different prospect, for the conquest of the last frontier has begun. Development of northern energy reserves and exploitation of northern mineral resources threatens to erode the margin that has underwritten the Dene survival up till now. That erosion comes in the form of direct destruction of their economic base as the wild-life, the fish, the terrain, the air, in short, the

Rolfe, Brownstone, Draimin
Clarke, Menez, Smith
In Chief

1 renewable resources on which they depend suffer under
2 the environmental damage of development projects. But
3 it also comes, and perhaps more significantly, in the
4 form of social impacts as diverse as alcoholism,
5 prostitution and short-term employment that draws people
6 away from the land and away from their communities,
7 only to throw them back there when employment opportuni-
8 ties dry up.

9 Government policy as it relates
10 to northern native people gives no hope, no basis for
11 hope that this process will be reversed. The mandate
12 of the Department of Indian and Northern Affairs to
13 extinguish the Dene's aboriginal title in exchange for
14 reserves and monetary compensation does not offer an
15 economic base capable of supporting Dene society. The
16 protected lands will be too small, usufructuary rights
17 on unprotected lands will lose their value as develop-
18 ment decimates renewable resources and monetary compensa-
19 tion insufficient to begin with, will not come within
20 an integrated development plan worked out by the Dene
21 necessary to maximize its usefulness.

22 Moreover, the chronic failure
23 of government programs directed at assimilating native
24 people within the dominant non-native society closes
25 off what might be an alternative source for the satis-
26 faction of the material, if not the social and cultural
27 needs of the Dene. The future of the Dene under a
28 land settlement as it is now being advanced by the
29 Federal Government will be little different from what is
now the present day reality for most native people in

Bolle, Brownstone, Draimin
Clarke, Menez, Smith
In Chief

southern Canada -- unproductive reserves, emigration to the metropolitan centers; in both places welfare, alcoholism, violence, suicide, demoralization. The injustice of this situation is inescapable and the need for an alternative is clear.

A land settlement that recognizes the aboriginal title of the Dene to their traditional lands and that invests them with the power to chart their own course for the future is an alternative consistent with the goals of social equality and justice that form the foundation of Oxfam-Canada's work. This demand by the Dene to control their own lives and to chart their own future course constitutes the essence of the Dene Declaration we believe, and the reason why Oxfam-Canada strongly supports it. The land will provide the material base and the self-determination will provide the institutional foundation for the Dene to meet their development needs. Without the latter, power over the lives of the Dene will continue to rest in hands of Canadian governments which have consistently shown themselves whether through ignorance or insensitivity to be incapable of wielding power beneficially.

Political rights that give the Dene control over development on an on-going basis in the Mackenzie Valley must be fundamental to any just land settlement. Without ownership of the land and of the rights to its renewable and non-renewable resources, the self-determination of the Dene will lack an economic base and will be vacuous. Both land and self-determination are important; both are necessary.

Rolfe, Brownstone, Draimin
Clarke, Menez, Smith
In Chief

The alternatives are clear.

This is not a debate about legalities, but about social justice. The history of colonialism and exploitation whose consequences are so evident in the Third World and regrettably are also evident in the treatment of native people in Canada must not be repeated in the Mackenzie Valley. For what this Inquiry is considering is not only the right to cultural survival of the Dene, but their material and social survival as well. As basic human rights, these must be guaranteed to them.

Thank you, your honour.

THE COMMISSIONER: Thank you
Mr. Brownstone.

MR. BELL: I'd now like to call on Mr. Clarke to read in the evidence of his group.

WITNESS CLARKE: Mr. Commissioner.
We refer to the document, "Colonial Patterns of Resource Development", a case study of the native people's struggle within the Amazon Basin of Brazil and its implications for the Northwest Territories.

Just a brief comment, Mr. Commissioner; we too are very pleased to be here to assist in this Inquiry. As you know, the churches have followed with great interest the work that you've been doing in the north and we look forward to your appearance in the south as well. Thank you.

We are grateful for this opportunity to present our concerns about the future course of resource development in the Canadian north before what may well become the most significant public

Rolfe, Brownstone, Draimin
Clarke, Menez, Smith
In Chief

inquiry in the history of this nation.

As you know, the church has had an historical relationship with the native people in the Northwest Territories. We readily acknowledge the church in Canada has participated in the injustices incurred by native peoples in the past. We look to the past in order that we might act more responsibly in the present, and today the projected resource development for the Northwest Territories raises profound questions of justice and poses a serious challenge for the whole church in Canada.

As a consequence, the church has initiated research, education and action programs which are designed to address the ethical issues of northern development today. The church has also had the concern with the corporate responsibility in our society today. An inter-church Task Force on Churches and Corporate Responsibility has been established to enable the church to investigate the behavior of corporations and call them to account on the question of public and social responsibility. In a brief to the Royal Commission on Corporate Concentration to be submitted on Wednesday of this week, the Task Force will present a series of case studies to advance the argument that corporations can no longer ignore public and social responsibilities. In the same context, the churches have initiated a Corporate Action Research Project to prepare the background studies on corporate resource development in the Amazon and the north. It is on the basis of these studies that this presentation is made.

Rolfe, Brownstone, Draimin
Clarke, Menez, Smith
In Chief

It is our understanding that the purpose of this particular phase of your Inquiry is to assess the social impact, particularly on the lives of native peoples, of building a pipeline down the Mackenzie Valley. In this context, we contend that it is important to examine the struggles of native people elsewhere in the world who have encountered similar patterns of resource development. Indeed, the social impact of development plans for the Northwest Territories cannot properly be understood apart from such an examination for two fundamental reasons.

Firstly, native people everywhere have a special relationship to the land which is often neither understood nor tolerated by the larger societies in which they live. The tendency to look at each group in isolation denies us the insights we can get from looking at the common experience of native peoples throughout the world.

Secondly, the land occupied and used by native people is the object of increasing interest by transnational corporations who, acting with the support of national governments, are today the dominant forces in resource development.

We have chosen here to look at the struggle of native people in the Amazon region of Brazil and for the past decade, transnational corporations in cooperation with the Government of Brazil and other governments, including Canada's government, have taken control of the Amazon's rich resource base. A variety of mining, agricultural, forestry,

Rolie, Brownstone, Draimin
Clarke, Menez, Smith
In Chief

and energy projects have been initiated along with the construction of highways, railways and seaports. Native people have had no role in decisions about the use of their lands and their development. In effect, the colonial pattern of resource development has emerged in the Amazon which has had tragic consequences for the native people who have inhabited this region of the world for centuries.

Some may feel our choice is inappropriate. Brazil is a peculiarly harsh example in respect to its treatment of native people. Canada treats its native people distinctly less harshly and the difference in degree at some point becomes a difference in kind. This difference however, should not lead us to conclude that examining the structure and pattern of resource development in the Amazon is irrelevant to understanding resource development plans for the north, including the proposed gas pipeline.

24117
Rolle, Brownstone, Draimin,
Clarke, Menez, Smith
In Chief

1 There are some important parallels between resource
2 development in the Amazon region and the Northwest
3 Territories which, we believe, indicate that the Amazon
4 case is not an isolated experience but has implications
5 for resource development here. As we will show presently,
6 some of the same transnational corporations are involved
7 in both regions. The Canadian Government also plays a
8 role in both regions -- a major one, of course, here
9 in the north, and a minor, but nevertheless most
10 disturbing one in Brazil.

11 There is a final and compelling
12 reason for insisting on the relevance of our case study
13 of the Amazon for the north. While the situation in Brazil
14 is presently much worse than in Canada, native people
15 here have no guarantee that their situation will not
16 worsen and dramatically so. Threats that a pipeline
17 will be built regardless of whether or not there is ^a land
18 settlement acceptable to the native people would, if
19 carried out, constitute coercion of a nature that
20 would move the north tragically closer to the present
21 realities of Brazil. For what we see emerging in the
22 Northwest Territories is a colonial pattern where native
23 peoples have no effective control over future economic
24 development of resources on their lands.

25 In presenting this study,
26 Mr. Commissioner, we are acting in solidarity with our
27 sister church in Brazil. For the Brazilian Church has
28 become a significant opposition to the relentless exploi-
29 tation of Indian people in the Amazon. In this particul-
30 ar moment in history, we find ourselves acting in the

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
In Chief

tradition of the prophets by engaging in the struggle of native peoples for justice in both the Northwest Territories and the Amazon.

Now let us first consider the people and the resources of the Amazon. The Amazon region of Brazil constitutes an enormous land mass of 1.5 million square miles stretching across the entire north and north-west half of the country. For several thousand years, the Amazon Basin and its surrounding regions have been the homeland for Indian people. In recent years the Amazon region has become recognized as one of the world's last untapped storehouses of mineral wealth, agricultural lands, and forests.

Through the centuries, the Indian people of the Amazon have developed a collective culture and self-sufficient economy. When the Europeans arrived in the 15th century, they found a dense and lively Indian population in the Amazon region. There is no certainty about the size of the aboriginal populations prior to the arrival of the Europeans, but historians calculate that the Indian people may have numbered between one and 5,000,000. By 1900, intervening atrocities and natural disasters had drastically reduced the Indian population to less than a million. By 1940 the estimate was 500,000.

Since time beyond memory, the Indian people of the Amazon have had a unique relationship with the lands they have inhabited. The land itself has been intrinsic to the native way of life in the

Rolle, Brownstone, Draimin,
Clarke, Menez, Smith
In Chief

Amazon and the native culture has been developed in harmony with the environment. For the Brazilian Indian, therefore, as with aboriginal people elsewhere, the relationship with the land is not simply economic but is necessary to maintain the self-sufficient, collective way of life, and as such is considered inalienable from them as a people. To separate the Amazon Indians from their land is to deny their being, to destroy their way of life, and to disrupt the social, cultural, spiritual, economic and political relationships of their society. These are the conclusions of an historic meeting of native peoples, the First Indian Congress of the Southern Hemisphere held at the Catholic University of Asuncian, Paraguay, in October, 1974.

In the words of Tururin, chief of the Pataxo Nation in the Amazonia:

"We Indians are like a plant, which suffers seriously -- or dies -- when moved from its place. We cannot agree to leave here because we were here on this land long years before the reservation existed. For good or ill, it is ours ; it is where we were born and grew up and where our fathers and forefathers died and are buried."

The Indians of the Amazon today claim the lands they have occupied for centuries in Amazonia to be their own. For these aboriginal peoples the concept of land ownership is communal. The land exists to provide for the needs of people rather than the maximization of profits. The sole purpose of social

Rolie, Brownstone, Braimin,
Clarke, Menez, Smith
In Chief

1 organization itself is to guarantee the survival and
2 rights of all people, rather than a few, by creating con-
3 ditions for sharing power equally in the community and
4 living in harmony with nature and its phenomena.

5 For the past decade, the
6 Indian people and their culture have been seriously
7 threatened by the onslaught of resource development in
8 the Amazon. The vast mineral, energy, agricultural and
9 timber resources of the Amazon are being exploited for the
10 markets of the world. Indeed, the potential mineral
11 wealth of the Amazon is such that it is being heralded
12 in global business circles as the "mineral province of
13 the seventies". ("It was Canada in the '50s; Australia
14 in the '60s, and I'm totally convinced it will be
15 Brazil in the '70s," said a mining consultant by the
16 name of Patrick J. Delaney in "Engineering & Mining
17 Journal" of February, 1972).

18 The Amazon Basin contains the
19 world's largest reserves of iron ore, enormous bauxite
20 deposits (that, according to "Metals Week" December
21 16, 1974, will allow the country to become one of the
22 world's five largest producers within ten years, of
23 bauxite), the world's largest tin reserves and
24 enough manganese to become the world's second biggest
25 exporter. Other minerals found in the Amazon include
26 beryl, niobium, nickel, colobium, tantalum, cobalt,
27 tungsten, and copper. The "Los Angeles Times" for
28 September 26, 1975 reported good potential for chrome,
29 phosphates, potassium, gold, diamonds and other gems.
30 In addition, the region may hold potential for hydro-

Rolle, Brownstone, Draimin,
Clarke, Menez, Smith
In Chief

power
1 electric projects, and substantial oil reserves. Oil
2 was discovered at various sites, not only a good
3 quality but also in great quantity, especially in the
4 so-called Campos (offshore at the mouth of the Amazon),
5 an area that is already being estimated as a reserve of
6 approximately 800 million barrels. The Amazon also
7 represents one of the largest forests in the world. Fin-
8 ally, vast tracts of land in the Amazon are being
9 cleared primarily for cattle-raising.

Prior to 1964, there had
been very little initiative taken in exploiting the re-
sources of the Amazon. Until recently, there were a
number of reasons for this resource base remaining
untapped for large-scale economic exploitation. The
virtual physical inaccessability of the Amazon region
has been perhaps the primary deterrent in the past.
There was also a lack of demand, both internally and
externally, for Amazon's resources. The lack of strong
state support and incentives was reflected in an economic
nationalism which all but precluded the participation
of foreign mining companies in the nation's mineral
development because of a restrictive mining code. In
this code subsoil rights were classified as being in
the public domain and exploration and mining rights
could only be granted to the Brazilian nationals.
Finally, no geological mapping had been made of the
Amazon region in order to uncover the sites that
contained the mineral resources.

In 1964, a military coup
affected a number of these factors. The rapid escalation

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
In Chief

of mineral resource development gained momentum particularly because of the military government's new mining code promulgated in 1967. The new code stipulated that the government may develop only existing mining companies and can initiate new mining ventures only if no private companies have expressed interest in them. In fact, it favored private foreign-based corporations to exploit the new mining ventures rather than take the initiative itself.

The impetus for this growth was given through conducting a complete geological survey of the Amazon and introducing fiscal incentives and tax exemptions for foreign investments in mining ventures. A state agency, the Cia de Pesquisa de Recursos Minerais was set up in 1970 as a service company, an exploration company, and as a finance company, such that rather than develop a mine itself the CPRM would "work with and for private companies" according to one of its directors.

Today the plan for the Amazon is on a massive scale which includes mineral resource extraction and development, timber extraction and forest products complexes, agricultural enterprises principally for cattle raising, and development of an infrastructure exemplified by the trans-Amazonic highway system.

The biggest boom in Brazil today is occurring in the mining sector. After successfully achieving a target of doubling the value of the country's mineral output between 1969 and 1973, the new

Rolle, Brownstone, Draimin,
Clarke, Menez, Smith
In Chief

development plans called for a quadrupling of output again between 1975 and 1980. Exploration budgets, which were almost non-existent a decade ago, will have reached an annual rate of \$150 million by the end of 1976, more than the combined exploration budgets of Canada and Australia. Mineral claims jumped from an annual rate of 2,000 in 1968 to over 20,000 in 1975. Moreover, it is thought that even all this present activity is just skimming the surface of what appears to be the most important new basin of mineral wealth for the western industrialized nations.

Now if we could take a look or consider the corporate takeover of the Amazon. In section, the previous reference has been made to the resources of the Amazon and the changing conditions which make their extraction possible. Over the past decade an increasing number of transnational corporations, often participating in joint ventures, have played a decisive role in resource development projects within the Amazon region. Canadian-based transnationals will be discussed in a later section.

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Rolfe, Brownstone, Draimin
Clarke, Menez, Smith
In Chief

The construction of the Amazon road system which includes the 3,100 mile

Trans-Amazon highway from northeastern Brazil to the Peruvian front here, the Belem-Brazilia Highway, running north to south on the eastern edge of the Amazon, the Santarem-Cuiaba Highway running north to south through the west-central Brazil, the Northern Perimeter Highway and the Porto Velho Road passing through Mato Grosso and Rondonia has involved several foreign surveying and equipment corporations. Earth Satellite Corporation, Litton Industries and Westinghouse Corporation all have contracts for Project Radam, a \$7million aerial photographic survey of the Amazon. Komatsu (Japan), Fiat of Italy, General Motors, the Caterpillar Brasil, J. I. Case, Clark Equipment, Eaton Corporation Wabco, Huber-Warco (U.S.) and others, have contracts totalling \$172 million for earth moving equipment.

United States Steel is involved in a joint venture, the Amazonas Mineracao for the production of iron-ore. Bethlehem Steel participates in a joint venture, Industrias E Comercio de Minérios, in manganese. Alcoa, Nippon Steel of Japan and the Kaiser Aluminum Company, National Bulk Carriers, Pechiney, Alusuisse, Rio Tinto Zinc and Hanna Mining are all involved in the bauxite field. Billiton, owned by the Royal Dutch Shell Company and W. R. Grace (Rockefeller Molybdenum Corporation - Moreira Salles), Portland Cement and several others have participated in joint ventures regarding tin.

The development of agriculture,

Rolfe, Brownstone, Draimin
Clarke, Menez, Smith
In Chief

mostly cattle raising, involves National Bulk Carriers, owned by D. Keith Ludwig and Volkswagen Brasil, among others. In forestry, National Bulk Carriers is also involved.

Now, the transnational corporations operating in the Amazon function in response to the demands of a global market system. By securing control over land in the Amazon, these corporations gain access to important supplies of raw materials. Access to supplies, in turn, provides these corporations with the power to determine or influence world market conditions on particular commodities and control over land resources and markets, together guarantees rising profit margins for the transnationals.

The operations of the transnationals in the Amazon region have been facilitated by the government's overall development policy for Brazil, known as the Brazilian Model. A combination of state incentives, international aid, foreign investment and private financing characterizes this Brazilian Model. The state does not hide the fact that integrated and dependent capitalism has been the chosen as the model for development in Brazil. Analyses of the Brazilian Model have been made by the Bishops of the Amazon and the Catholic Bishops of the north-east Brazil and the Center-West. All three conclude that the present government of Brazil has become the instrument of domination for foreign capitalists, aligned with the local elite. In effect, this means that national development becomes subordinated to and integrated with the interests of the

Rolfe, Brownstone, Draimin
Clarke, Menez, Smith
In Chief

transnational corporations. For example, Alcan exports all bauxite extracted from the Amazon overseas, including exports to its Canadian site in Kitimat, B.C.

In particular, the Brazilian government has facilitated the operations of the transnationals in the Amazon through an elaborate state program of investment incentives. Corporations have been given tax exemptions of up to 50 percent as well as tax exemptions on the importation of new capital goods and certain raw materials. In addition, an enormous amount of public funds have been spent on providing basic infrastructures such as highways, harbors and electric power. These facilities have been especially used by the transnational corporations in transporting raw materials for export to other countries. Their interests are in exporting Brazil's natural resources for a maximum profitable sale elsewhere.

At the same time, Brazil's policies on joint ventures have provided greater benefits and more effective control for the transnationals in the Amazon. The "Financial Times of London," September 23, 1975 points out:

"Besides avoiding potential political problems, foreign companies with minority shares in Brazilian-controlled projects have a greater access to government loans and grants, as well as having a better chance of winning government contracts because, for most purposes, a Brazilian company is defined as one with 51 percent or more Brazilian capital. As they frequently both control technology and have sufficient

Rolfe, Brownstone, Draimin
Clarke, Menez, Smith
In Chief

votes on the Board of Directors to veto any decisions they are firmly opposed to, the foreign companies exercise very great power in these joint ventures despite their formal status as minority shareholders."

Through this process, valuable mineral, timber and energy resources from the Amazon are extracted and exported to other countries through the global market system. As a consequence, the resources of the Amazon are not being developed to serve the needs of the vast majority of Brazilians, let alone the native people of the Amazon. This is the colonial pattern of development whereby powerful corporations have taken control of both the people and the resources of the Amazon.

Now, if we could look at the exploitation of the native peoples in the Amazon. In the past, periods of economic boom in the Amazon, for example, the production of rubber, have been accompanied by the extermination of Indian people on a large scale basis. During these times, it was possible to retreat into the remote areas of the Amazon where contact with non-Indians and the immediate threat was minimal. The situation now has radically changed. Due to the type and scale of resource development now underway in the Amazon, the Indian people can no longer escape the impact. In the words of the former president of the National Indian Agency known as FUNAI,:

"The Indian cannot be allowed to impede development."

This has been the policy of the Brazilian government in the Amazon Basin. For the

Rolfe, Brownstone, Draimin
Clarke, Menez, Smith
In Chief

transnational corporations and the Brazilian government, it has been necessary to remove native people from their traditional lands in order to proceed with resource development and in particular, the building of highways, mining industries and agricultural enterprises have resulted in the exploitation of native peoples and their culture.

First of all, highway construction. The construction of the TransAmazonic Road System provide the basic conditions for attracting foreign investment and resource development. The highway system was built to criss-cross Indian parks established -- which were established to give native populations a chance for survival, and the 17 reserves of the Amazon Basin. The construction of the highway has been damaging-- has had damaging effects on the lives of Indian people. According to the Director of the Xingu National Park for example, the construction of the BR 80 highway has brought "Alcoholism, prostitution, adventurers and those who destroy the environment."

It has uprooted the Txukarramae tribe which were formerly within the confines of the Xingu National Park. In addition, the introduction of new diseases during the construction phases of the highway has wiped out scores of Indian families.

The Brazilian government has utilized various tactics to free Indian lands for highway construction. Plans were introduced to resettle half a million people living along highway -- the highway routes. Laws were also passed giving the government the

Rolfe, Brownstone, Braimin
Clarke, Menez, Smith
In Chief

right to lands not occupied.

A new

Brazilian Indian Statute was passed in December of 1973 which virtually gave the government a free hand with regards to Indian land, citing the national interest as its ultimate justification. Contrary to the wishes of Congress, former President Medici vetoed the section on the statute that would have protected native people by prohibiting the leasing of Indian land. Moreover, garimpeiros were hired to drive indigenous people from their lands and settlers were sent in to squat or colonize Indian territories. At the same time, the construction projects have severely damaged hunting and fishing practices for many Indian people. The damming of rivers and building of roads has altered the traditional patterns of animals and fish.

Rolfe, Brownstone, Draimin,
Clarke, Men ez, Smith
In Chief

Secondly, Mining Industries.

In 1971, the Brazilian Government declared the State of Rondonia as a major region for the extraction of cassiterite or tin. No consideration was given to how this resource extraction could proceed on Indian land. Rather, it was simply assumed that the Indian people would have to be driven away and strategies were devised to remove or eliminate them. The government's construction of the Trans-Amazonic Highway and the new port at Porto Velho paved the way for the investment of several transnational corporations. As a result, four or five major operations control tin production in Rondonia today, including the Canadian-based corporation, Brascan whose subsidiary, Promisa, has controlling interest in Mineracao Jacunda.

The Cintas Largas and Surui Indians, who for centuries had lived in relative isolation at the headwaters of the Aripuana River in Rondonia, were suddenly faced with the possibility of extinction. In 1971 the two tribes agreed to resettle in Aripuana Park where they were assured of government protection. Several months later, the government began selling parcels of land in the park to settlers. Several transnational corporations were granted permission to continue exploration on park land, and the highway was extended through the park despite Indian protests. The final blow was dealt in 1973 when it was announced that the park would be reduced to one-third its original size. Ten mining companies had received subsoil rights by the Brazilian Government in the newly confiscated area.

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
In Chief

- One of these was Billiton, a subsidiary of Royal Dutch Shell; its Canadian subsidiary, Shell Canada, has extensive mining claims here in the Nahanni and is a member of the Arctic Gas Consortium.

5 In the upper Amazon territory
6 of Roraima, exploration for uranium has severely affected
7 the Yanomami nation. The governor of the territory
8 stated:

9 "I am of the opinion that an area as rich as
10 this -- with gold, diamonds and uranium -- is
11 not able to afford the luxury of conserving a
12 half a dozen Indian tribes who are holding
13 back development."

14 Thirdly, we look at Agricultural
15 Enterprises. The Brazilian Government has also encouraged
16 the formation of large agricultural business in the
17 Indian territories of the Amazon. Government subsidies
18 have been provided to help clear the land, construct
19 storage facilities, and even harvest the crops. A major
20 example is the Swift-Armour-King Ranch, a 18,000 acre
21 cattle ranch in the Paragonimas. In 1971, Deltec Interna-
22 tional, through its subsidiary, Swift do Brasil, made
23 a bid to purchase the necessary acreage. The deal, however,
24 became complicated by the fact that the lands had been de-
25 signated as a reservation for the Kaapore and Tembe Indian
tribes. In 1972, the World Council of Churches brought
attention to the fact that the King Ranch was sitting
on the lands of the Tempe and Urubu-Kaapore Indians.

The Brazilian Government's
Minister of the Interior declared in 1973 that:

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
In Chief

1 "the development of Amazonia will not stop
2 because of the Indians."

3 It was argued that Brazil needed large ranches in order
4 to raise its levels of beef exports. In violation of
5 national law, the property was promptly switched from
6 federal to state jurisdiction in order to complete
7 the transaction. Little or no consideration was given
8 to how the Indian people were to survive without their
9 lands. In 1972, Brascan, in conjunction with the CAEMI
10 group, purchased Deltec's Brazilian subsidiary.

11 The impact of these patterns
12 of resource development on the native peoples of the
13 Amazon has been tragic. Reflecting on these injustices,
14 Claudio Villasboas, Director of Xingu National Park,
15 commented as follows:

16 "They say it is necessary to open up roads to
17 populate and settle the Amazon. Now the roads
18 are open, and we can see that man is still
19 absent. The forests are being levelled not only
20 to open up the roads, but also to introduce
21 cattle ... And for this the Indians are being
22 expelled from their reserves and our ecological
23 balance is being savagely mutilated."

24 Now we turn to the failure
25 of government protection of native rights. In 1968, the
26 National Foundation for the Assistance to the Indians
27 (FUNAI) was established as a government agency with a
28 twofold objective. FUNAI was to protect native people
until they are sufficiently "integrated" into the national
society, and to serve as an agency for the Ministry of

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
In Chief

Interior by promoting the development of the Amazon.

In its original statutes, FUNAI incorporated the conclusions of a government Task Force created in 1967 to investigate the precursor of FUNAI, the SPI. It endorsed the principles of the United Nations and the International Labour Organization regarding human and minority rights. The first article of the FUNAI statutes charged it with promoting respect for tribal institutions and communities, guaranteeing the permanent possession of lands which Indians inhabit, and the exclusive use of natural resources therein, according to the Brazilian Constitution; preserving the biological and cultural equilibrium of Indian communities in contact with the national society; and defending the spontaneous acculturation of Indian communities, rather than their rapid and enforced acculturation.

By 1970, however, FUNAI began to change its policies and deviate from the principles of its original charter.

THE COMMISSIONER: Excuse me. FUNAI was the creation of the Government of Brazil?

A That's correct. By 1970, however, FUNAI began to change its policies and deviate from the principles of its original charter. Commercial groups from the south of the country, large landowners, and foreign corporations pressured the government into opening up the lands of the Amazon and opposing the recognition of Indian rights. As a result, the Indian policy of FUNAI was subordinated to the wider political and economic directives of the Brazilian model of development.

Rolie, Brownstone, Draimin,
Clarke, Menez, Smith
In Chief

1 FUNAI assumed an entrepreneurial position, contending
2 that Indians must be integrated into the Amazonian patterns
3 of development and growth. At the same time, FUNAI
4 became an enormous piece of bureaucratic machinery centered
5 in Brasilia. With massive contracts for mineral
6 exploitation and land development, the whole issue of
7 Indian rights became secondary to the promotion of
8 Amazon development.

9 In 1972 Deputy Jeronimo Santana
10 commented that -- and I quote:

11 "FUNAI .. has become an entity where groups
12 take refuge to exploit the natural resources
13 of the reserves where the Indians live. Today
14 it is the Indian who is of least importance. The
15 Indian is a 'thing' and the policy put into
16 effect by FUNAI proves it."

17 In 1973, the Brazilian Government
18 passed a new Indian Statute which virtually ignored
19 the rights of tribal populations in the face of the
20 extremely rapid pace of resource development in the
21 Amazon. The new Indian Statute removed subsoil rights from
22 native people and placed emphasis on programs for the
23 rapid integration and pacification of the native peoples.
24 Programs for pacification were considered crucial in
25 order to create conditions acceptable to foreign investors.
26 As a result, FUNAI's function became that of
27 protecting company and construction workers against
the possibility of threats on Indian lands. Programs
for integration were designed to remove Indian people
from their lands and make way for the operations of

Rolfe, Brownstone, Draimin,
~~Clarke~~, Menez, Smith
In Chief

the transnational corporations. In some cases, FUNAI has resettled Indian people on reserve land not large enough to support the whole tribe. The Yanamamo nation of 10,000, for example, was given a reserve where only 300 people could survive.

The government's programs of pacification and integration have had a devastating effect on Indian tribes such as the Cintas Largas. Previously semi-nomadic hunters and cultivators, the Cintas Largas were used to a rich diet of game, nuts, honey as well as maize, yarus, peanuts, sweet potatoes, bananas, and papayas which they cultivated themselves. Today, however, they can no longer feed themselves. Hunting and planting have been severely limited, not only because of the loss of land but also because many of the people have become decimated and immobilized by sickness. They now depend on government handouts for a large proportion of their food with the result that malnutrition and starvation are widespread. An Indian agent who was originally involved in FUNAI's pacification and integration of the Cintas Largas, said the following:

"There is today a dangerous reality in the Aripuana Park. It is the loneliness, the anxious incomprehension of the people. It is an illogical moment in their history.

In less than four years their lands have begun to be divested. Epidemics will now leave their mark and many more of them will take the first kilometers down the long road where they will find misery, hunger, prostitution of their women, and the end of

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
In Chief

their dreams."

In effect, the FUNAI programs for pacification and integration offer no protection for the Indian people and their constitutionally recognized rights in the face of rapid resource development. Once separated from their land, the Indian peoples are compelled to survive in an alien culture. They have no alternatives but to be assimilated into a system of welfarism or wage labor. Once a thriving, self-sufficient people, the Indians now find themselves reduced to a state of dependency and helplessness. As a result, some Indians have been forced into slavery, others have become beggars or exotic tourist attractions, and still others have migrated to Brazil's cities where they have become part of the massive urban poor.

The basic rationale behind FUNAI's program for pacification and integration was critically discerned by the bishops of the Amazon, and I quote:

"...if the Indians are there but do not produce according to the dictates of integrated and dependent capitalism, if they do not have the legal title to the land, if they do not own agricultural enterprises, then they must give way to the new colonizers, they must withdraw from the lands which civilization has now decided to sell or give away to those destined to develop the interior of the country. If the Indians -- thus challenged and robbed of their theoretically recognized rights, as well

Rolie, Brownstone, Draimin,
Clarke, Menez, Smith
In Chief

as their natural way of life, die, then let them die. If they resist, they are to be opposed as though they were the invaders of their own lands."

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Rolfe, Brownstone, Draimin,
Clarke, Menez , Smith
In Chief

Turning now to the Canadian connection, corporate and governmental. There is a Canadian connection to the tragic story of the Amazon. Directly and indirectly, the Canadian Government and Canadian-based corporations are involved in the colonial patterns of resource development in the Amazon. In recent years, Canadian-based corporations have extended their operations to the Amazon Basin and the Canadian Government has promoted this type of investment. A recent publication of the Department of Industry, Trade and Commerce, "Canada Commerce", January 1976, described the investment possibilities in Brazil this way:

"Why not settle down here yourself? In doing so, you would have some familiar Canadian neighbors including Alcan, Massey-Ferguson, Moore Corporation, The Royal Bank of Canada, Connaught Laboratories, The Bank of Montreal, The Imperial Bank of Commerce, The Toronto-Dominion Bank and Stelco ..."

Brascan is investigating mineral deposits in the states of Minas Gerais, Amazonas, Rio Grande do Sol, Para, Ceara, and Bahia. It is also involved in the territory of Rondonia through its mining subsidiary, Promisa. It maintains a 60 percent interest in the tin mine Jacunda, also located in Rondonia and through its interest in Swift-Armour, it holds agribusiness interests throughout the Amazon, including the King Ranch on Kaapore and Tempe Indian lands. In partnership with MacMillan Bloedel, it maintains a 250,000 acre tree farm in the State of Santa Catarina.

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
In Chief

Alcan manages and holds 19 percent ownership in a joint venture with the Brazilian government, Reynolds Metals, Billiton (Royal Dutch Shell) Rio Tinto Zinc and others in a \$290 million dollar project located on the Trombetas River for bauxite extraction. It also operates two completely owned smelters, Aluminio do Brasil and Aluminio do Brasil Nordeste. In addition, it is active in mineral exploration on the north shore of the Amazon between Manaus and Belem.

Inco, in cooperation with the German transnational operation, Baminco, a nickel exploration and feasibility project in the Goias state, in preparation for a possible \$500 million investment in Goias. It is also involved in the discovery of a nickel deposit in the state of Para. Inco is investigating copper deposits and has its own exploration program.

Noranda is involved with U.S. Steel and New Jersey Zinc, a division of Gulf and Western, in a joint venture for a zinc deposit in the State of Minas Gerais. Falconbridge maintains an exploration office, through its own subsidiary Mineracao Falcao Company, in Rio de Janeiro with a program stretching throughout Brazil.

Cominco has an active exploration program for base metals throughout Mineracao Cominco Limited, and has an active exploration program throughout Brazil. The Anglo-American corporation, the parent of Hudson's Bay Mining and Smelting is involved in a joint venture to carry out exploration and recently

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
In Chief

purchased 49 percent of Morro Velho, Brazil's only gold mine located in Minas Gerais.

In addition, Canadian companies Swan Wooster and Howe International have been engaged in providing advanced engineering for the port and railway lines required for the joint venture to develop the iron ore deposit in the state of Para.

At the same time, the Canadian Government, through its various departments and agencies is active in the Amazon region. Two officials of CPRM told a meeting of the A.I.M.E. in February of 1975 that:

"In harmony with the goals set by the Ministry of Mines and Energy, a series of steps were taken in 1971 to set up a technical cooperation agreement between the Brazilian Government and the Canadian Government. The Brazilian - Canadian Geophysical Agreement was considered top priority by the Ministry of Mines and Energy and the work is due to start in 1975."

THE COMMISSIONER: Excuse me,

221 what is CPRM?

222 A Do you want to answer that?

223 WITNESS DRAIMIN: The CPRM is a Brazilian Government organization which was set up to promote mineral projects in the Amazon and throughout Brazil.

Q Right.

WITNESS CLARKE: Shall I continue?

Q Yes, please sir.

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
In Chief

A The Geological Survey of Canada, Department of Energy, Mines and Resources has been engaged in setting up a comprehensive mineral exploration project. Roger Blake, Consul and Trade Commissioner in Rio de Janeiro commented as follows:

"This was the first step in what is hoped to be a continuing program of cooperation between two of the largest countries in the hemisphere and whose geological terrain is so similar."

The \$11.2 million study is now being carried out by the Canadian Geological Survey Companies in the three Amazon states of Goias, Mato Grosso and Para with the initial funding coming from the Canadian International Development Agency. The companies carrying out this airborne survey are Northway Survey Company, Survair Limited and Terra Surveys. The size and duration of the project make it the largest effort in which the G.S.C., that is to say the Geological Survey of Canada, has been involved outside of Canada. Results of these studies are now made available to the Brazilian Government who in turn gives them to private corporations such as Inco, already working in the area being surveyed. The GSC's involvement: "will continue through all stages of mineral exploration right up to the drilling of interesting occurrences", according to B.E. Ministra, Aid Coordinator for the GSC. Furthermore, CIDA has funded a five-year program of mineral exploration education to familiarize Brazilians with Canadian technology at the University of Bahia at a cost of \$1.2 million.

Rolte, Brownstone, Draimin,
Clarke, Menez, Smith
In Chief

Indeed, the Canadian government has established close working relationships with such transnational companies as Brascan, Alcan, Inco, Falconbridge, Noranda, Cominco and others presently operating in the Amazon. Moreover, the boards of directors of these mining transnationals have included members of the Federal Cabinet, government agencies, crown corporations and the major banking institutions. A case in point is Brascan which has included two Liberal Cabinet ministers, past and present on its Board of Directors. These are Mitchell Sharp and Robert Winters. Brascan's Chief Executive Officer, Jake Moore was, until recently, a member of the Board of Directors of the Canadian Development Corporation. Noranda's vice-president is on the Board of Directors of the Export Development Corporation, a federal agency.

Finally Mr. Commissioner, we look at the implications of all this for the Northwest Territories. In the foregoing analysis, we have described the colonial pattern of resource development which has taken place in the Amazon region of Brazil during the past decade. From our study, it is evident that this pattern of resource development in the Amazon is primarily controlled by transnational corporations receiving the active support of the Brazilian Government and serving interests outside of Brazil.

It is also clear that native people in the Amazon have had no control over decisions about how development takes place. This has been crucial since only they are able to protect their own

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
In Chief

interests and as a consequence, resource development in the Amazon not only fails to meet the needs of indigenous native peoples, but ends up destroying their culture and their way of life.

The following parallels, we believe, indicate that the Amazon case is not an isolated experience but has implications for resource development in the Northwest Territories.

Just as the Amazon region is recognized as one of the world's last uncapped storehouses of mineral wealth, so the Northwest Territories is viewed as a resource hinterland for southern Canada and the industrialized world in general. For the native people of the north, as for the Indians of the Amazon, the lands they have inhabited are essential to maintain their way of life. To separate either group from their land is to deny their being, to destroy their way of life and to disrupt the social, cultural, spiritual, economic and political relationships of their society.

Just as native people in the Amazon are excluded from making decisions on how development takes place, so the native people of the north are having their right to decide how development takes place challenged by threats that a pipeline may be built, whether or not there is a land settlement acceptable to them.

Rolfe, Brownstone, Draimin
Clarke, Menez, Smith
In Chief

We contend also that the

Department of Indian & Northern Affairs has the same built-in conflict of interest as its Brazilian counterpart, FUNAI. That is, it is charged with the task of protecting the interests of the native people while at the same time it promotes the development of northern resources.

The involvement of transnational corporations in the resource development process is another feature common to the two regions. Indeed, in many instances the same corporations active in the Amazon resource development are also involved in the Canadian north. Brascan, whose activities in Brazil were discussed in the previous section, has a 45% interest in Yava, and acts as operator for the Yava syndicate in copper-lead-zinc exploration under way between Beechay and Casey Lakes and also base metal exploration near MacKay Lake. Through participation in Elf Canada Ltd., Brascan has oil and gas rights throughout the Northwest Territories, especially in the high Arctic. With a 12.3% interest in Magnorth Petroleum Ltd., Brascan is involved in 14.2' million offshore acres in the Viscount Melville and Lancaster Sounds. Brascan Resources recently acquired controlling interest of Western Mines, which holds a lead-zinc property in the Pine Point area, jointly with DuPont of Canada Exploration. Brascan recently made an unsuccessful bid for Ashland Oil Canada Ltd., which is a member of the Delta Five group. Brascan held until recently the largest single block (7%) of Hudson's Bay Co. shares.

Rolie, Brownstone, Draimin,
Clarke, Menez, Smith
In Chief

Inco, which is also involved in Brazil, holds a 4.44% interest in Panarctic and a gold property in the Bathurst Inlet area. Noranda, also holds a 4.44% interest in Panarctic, and through the Canex-Placer Company, made the lead-silver discovery at Howards Pass. It is involved in copper-lead-zinc exploration for base metals near Kaminak. Noranda has an option on Cadillac Exploration's silver-lead deposit at Prairie Creek.

Falconbridge, which operates in Brazil, controls the Giant Yellowknife Gold Mine near Yellowknife Bay. It also has an option on Arcadia Exploration's silver-gold deposits at Coronation Gulf and many other sites in Slave Province. With the same corporate parent as Falconbridge, Canadian Superior Oil is a member of the Delta Five group active in exploration in the Mackenzie Delta and Beaufort Sea. Canadian Superior Oil was, until recently, a member of the Arctic Gas Consortium.

Cominco operates the Pine Point Mine and is involved in copper-lead-zinc exploration near Beechay and Casey Lakes, copper exploration near the Redstone River, gold exploration around the Con-Rycon Mine, uranium exploration near Goulbourn Basin, and diamond exploration on Somerset Islands. It owns the Con Mine and has controlling interest and manages the adjoining Rycon Mine. Cominco was a member of the Arctic Gas Consortium, and is still involved through TransCanada Pipelines in which it is a major shareholder. It owns 87% of Pan Canadian Petroleum.

Rolle, Brownstone, Braimin,
Clarke, Menez, Smith
In Chief

which is a member of the Delta Five group and has a 17.7% interest in Panarctic. Bathurst-Norsemines optioned a 65% interest to Cominco at Hackett Lake. Cominco also has a 75% interest in the lead-zinc Arvik Mines on Little Cornwallis Island.

Hudson's Bay Mining & Smelting, whose parent, the Anglo American Corp. is also involved in Brazil and has a lead-zinc deposit at MacMillan Pass.

Four other transnational corporations are active in both Brazil and the Canadian north. Billiton (Royal Dutch Shell), through the Shell Exploration, has an option on Redstone Resources copper deposit at Coates Lake, a copper deposit at Little Dahl and Redstone River. It is involved in uranium exploration near Baker Lake. Billiton has a 11% interest in the Nanisivik lead-zinc mine at Strathcona Sound; Shell Canada is a member of the Arctic Gas Consortium and is also a member of the Beaufort-Delta Oil Project Ltd., that wants to build a crude oil pipeline down the Mackenzie Valley.

Rio Tinto Zinc has an option on Vestor Exploration uranium deposit at Nonacho Lake. Rio Tinto Canadian Exploration is investigating base metals at Arctic Red together with Welcome North and Serem Ltd.

Metallgesellschaft Company (that's a hard one, sir), has an 11% interest in the producing lead-zinc mine at Strathcona Sound and is exploring for uranium near Baker Lake. Its Brazilian involvement is through Baminco and with Inco, it has a

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
In Chief

nickel deposit in Goias state.

U.S. Steel is involved with the Hudson Bay Exploration and Noranda, in base metal exploration near Kaminak Lake.

The primary interest of these transnational corporations is in resource extraction for export at profitable rates, not the internal development of the country or region in which the resources are found, nor for the people to whom the resources belong. This is sometimes obscured by government and industry statements that these resource development activities are in the national interest, and by direct national government participation alongside the transnationals in the resource development process.

It may be that to some extent a parallel exists between the Brazilian Government's crucial role in promoting and facilitating resource development by the transnational corporations in the Amazon, which has been analyzed in this case study, and the Canadian Government's apparently growing role in resource development in the north. The Canadian Government and its Crown agencies have long supplied infrastructure in the north while at the same time royalty arrangements have been generous relative to provincial jurisdictions in Canada and relative to most other countries. In the oil and gas sector, the Canadian Government is directly involved through its 45% ownership of Panarctic. In a recent background study done for the churches, Professor Larry Pratt of the University of Alberta concluded that the role of government of

Rolle, Brownstone, Draimin,
Clarke, Menez, Smith
In Chief

1 Canada in future northern development,
2 "is likely to become increasingly direct
3 and pronounced. . . The government is under
4 pressure to provide public funds for high
5 risk, high cost frontier energy development,
6 and this seems to be the anticipated role of
7 Petrocan, working through joint ventures
8 and farmouts with the existing leaseholders...
9 It seems almost certain that the government
10 will be required to provide expensive
11 'completion guarantees' for any major pipeline
12 project (much as it did for the TransCanada
13 in the 1950s.".

14 In conclusion, Mr. Commissioner,
15 we believe that the possibility cannot be dismissed of
16 a colonial pattern of development with important
17 similarities to the Amazon experience occurring in the
18 Northwest Territories during the next decade. For these
19 reasons the church insists that the construction of a
20 Mackenzie Valley Pipeline and any other major resource
21 development project be postponed until native people
22 have control over the development process and there
23 has been a just settlement of land claims with the Dene.
24 In the interest of justice, we maintain that the
25 Dene must have a significant measure of control over
26 the future patterns of resource development in the
27 Northwest Territories. To achieve this objective, a
28 just land claims settlement is imperative. The experience
29 of the Amazon is a living testimony of the tragic conse-
30 quences that will arise from failing to achieve these

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
In Chief

basic objectives.

Thank you, Mr. Commissioner.

THE COMMISSIONER: Thank you,
Dr. Clarke. The statement that you have read is made,
I take it, on behalf of the Catholic Church in Canada.
Am I to understand that?

A May I qualify that, sir?

Two churches at the national level, both the Anglican and the Roman Catholic Churches, have been involved in sponsoring this particular study. The two churches, as you well know, have taken fairly strong stands with respect to this -- on this question, and it was felt that as a part of the followup procedure to our work it was important to engage in this kind of research and to work at this kind of level. So the two churches sponsored the Corporate Action Research Project that I referred to in the first couple of paragraphs of this presentation.

Q The statement made by the bishops of the Catholic Church of Canada on Labor Day last year -- I'm trying to remember now, was that statement endorsed by the Anglican Church and the United Church of Canada?

A That statement was endorsed by the leaders of the Anglican, United, Presbyterian and the Lutheran Church in America, Canada section. Since then the Anglican, United and Roman Catholic Churches have come together in a project as a followup to those statements which is called "Project North" and it's an Action Research Project in this particular area. So those three churches have been working together in backing this kind of a study.

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
In Chief

Q Yes, well just one other question and then perhaps we'll break for coffee, and I'm not -- let me put it this way, I think I understand everything you've said so far, but in your conclusion in your presentation you say, "for these reasons the church insists that the construction of a Mackenzie Valley pipeline and any other major resource development project be postponed until native people have control over the development process and there has been a just settlement of land claims with the Dene."

Now, the church in that paragraph means -- what church or churches?

A Yes. I think in terms of that particular -- in terms of the whole study here, the church is referred to in both a general and a particular sense. We have a real problem talking about the number of churches working together and we often specify that in terms of denominations, but we like to speak as "church" in that rather generic sense. But in, throughout this study I think you should take it as being the -- a study supported by the Anglican and Roman Catholic churches. And insofar as there is forthcoming from the other three that I mentioned, that would be a bonus.

THE COMMISSIONER: Yes, fine.

Well, we'll break for coffee then.

(PROCEEDINGS ADJOURNED FOR A FEW MINUTES)

(PROCEEDINGS RESUMED PURSUANT TO ADJOURNMENT)

MR. BELL: Mr. Commissioner, before we proceed with cross-examination, I'd just like

Rolle, Brownstone, Draimin,
Clarke, Menez, Smith
In Chief

to say that the two other members of this panel, Professor Hills and Mr. Simpson were unable to appear today and we propose to call them early next week some time and the I'd filed following exhibits as part of the evidence of this panel. The summaries of evidence and the appendices thereto, a copy of "Falconbridge" by John Deverall and the Latin America Working group; a copy of Supysana, the November 1975 issue of the Engineering and Mining Journal, the document entitled "Native People in the Brazilian Amazon"; the Impact of Development, by the Latin America Working group; a document entitled "A Survey of Mineral Resource Extraction in Brazil" by the Latin American Working Group; a document by Larry Pratt entitled "Corporate Interests in Natural Gas Development North of Sixty, a Report", a copy of the 1973 Annual Report of Brascan; a copy of the 1974 Annual Report of Brascan and a copy of the document entitled "A Church of the Amazon in Conflict with the Large Landholders and Social Marginalization".

I might add before we proceed to cross-examination sir, that Father Smith has some slide which he proposes to show after we adjourn this afternoon and everyone who is interested is welcome to attend.

THE COMMISSIONER: Where are we now then?

MR. BFELL: I think we're ready to proceed with cross-examination.

THE COMMISSIONER: Oh fine. Fine.

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
Cross-Exam by Hollingworth

1 MR. SCOTT: I was looking for
2 Mr. Bayly. He seems to have stepped out.

3 MR. HOLLINGWORTH: I can proceed
4 with my few questions sir.

5 CROSS-EXAMINATION BY MR. HOLLINGWORTH:

6 Q First, Mr. Brownstone, if
7 I might direct a question to you; on page 13 of your
8 evidence, you talk about the establishment of a liaison
9 officer who has the job of educating the residents of
10 the Province of Ontario and I'm wondering why the re-
11 sidents of Ontario were singled out for this attention
12 among all the residents of southern Canada?

13 THE COMMISSIONER: Most in
14 need, perhaps.

15 MR. HOLLINGWORTH: Well that's
16 what I thought sir and I just wanted to --

17 WITNESS BROWNSTONE: Thank you
18 your honour.

19 This is due to the particular
20 structure of Oxfam-Canada which is organized on a three
21 region basis; Oxfam-Atlantic, Oxfam-Ontario and Oxfam-
22 West. These regions generally decide on their own
23 educational program and in the case of this project on
24 its initiation, the Ontario region decided that it
25 would support, sponsor and participate in an educational
26 program having to do with the Northwest Territories
project. So this explains the liaison officer's activity
within that particular region.

27 Since that time, the western

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
Cross-Exam by Hollingworth

region in particular has expressed an interest and the liaison officer will now be working with the western region of Oxfam-Canada which includes the three prairie provinces and British Columbia.

I see. Thank you. Father Smith, on page 24 of your evidence, do I have the right person? There, yes, I do have the right person. Thank you.

WITNESS CLARKE: Clarke is my name.

Q I'm sorry, excuse me. There's so many people up there, I'm getting confused. On page 24 of the evidence you read sir, you quote from a study done by Professor Larry Pratt at the University of Alberta whose final remark is:

"It seems almost certain that the government will be required to provide expensive completion guarantees for any major pipeline project much as it did for TransCanada in the '50's."

Do you rely on that statement and adopt it?

A I beg your pardon? Do I --

Q Do you adopt that statement?

A Yes, we're relying on that statement, yes.

Q Well, isn't it a fact sir that there's no expense whatever involved in a government guarantee provided a project was completed and went ahead onstream as planned by a pipeline applicant?

A Well, I would like to turn

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
Cross-Exam by Hollingworth

this over to Tim Draimin here who has been working with Larry Pratt on that particular research and he'll be able to provide an explanation.

Q Surely.

WITNESS DRAIMIN: I think that Larry Pratt was trying to project into the future some of the possible ramifications of the development, and what he saw in terms of what was going to happen with the project, that there would have to be these guarantees. I'm not really that familiar with it myself, with some of the material that he's working with.

Q I'm sorry, could you speak up a little sir?

A Yes, I'm not totally familiar with the material that Larry Pratt has been working on. I'm just under the impression that he was projecting what are some of the possible repercussions of the development going ahead.

Q Well, if I suggested to you that a pipeline project which was completed and went onstream, even though it was guaranteed by the government, would cost the government nothing in terms of that no guarantee, you would be in position to agree or disagree with me? Is that how I interpret your remarks?

A Well, I think in terms of the brief, that the position of the brief would be that we do see possible ramifications of government participation as is already evident in terms of what's happening with the development around the Beaufort Sea

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
Cross-Exam by Bollingworth

and government commitments there in terms of infrastructure as well as other kinds of supports that the government has committed itself to undertaking.

(FALCONBRIDGE: PORTRAIT OF A CANADIAN MINING MULTINATIONAL BY J. DEVERALL MARKED EXHIBIT 576)

(SUPYANA; A DOCUMENTARY REPORT ON THE CONDITIONS OF INDIAN PEOPLES IN BRAZIL, NOVEMBER 1974 MARKED EXHIBIT 577)

(BRAZIL '75 DATED NOVEMBER 1975 MARKED EXHIBIT 578)

(NATIVE PEOPLE IN THE BRAZILIAN AMAZON, THE IMPACT OF DEVELOPMENT DATED APRIL 1976 MARKED EXHIBIT 579)

(A SURVEY OF MINERAL RESOURCE EXTRACTION IN BRAZIL MARKED EXHIBIT 580)

(CORPORATE INTERESTS IN NATURAL GAS DEVELOPMENT NORTH OF 60 DEGREES BY LARRY PRATT DATED JANUARY 18, 1976 MARKED EXHIBIT 581)

(ANNUAL REPORT OF BRASCAN, 1974, MARKED EXHIBIT 582)

(ANNUAL REPORT OF BRASCAN, 1973, MARKED EXHIBIT 583)

("A CHURCH OF THE AMAZON IN CONFLICT WITH THE LARGE LANDHOLDERS AND SOCIAL MARGINALIZATION" MARKED EXHIBIT 584)

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
Cross-Exam by Hollingworth

Q Yes, I quite understand
that, sir; but if the government were to provide a
guarantee to a project, a pipeline project, and if that
project were completed and went onstream, I suggest to
you there would be no expense whatever to the government
that placed the guarantee in the first place. Now can
you agree or disagree with that?

A Well, I think I could
disagree. I don't agree that you can make a statement
like that.

Q Well, how would you
disagree?

A I guess I would disagree
by looking at other instances where corporations have
made similar kinds of guarantees about that if things
with everything,
went ahead according to their own plans were carried
through that the government would have no involvement.
There are a number of cases already in Canada where
corporations have made similar kinds of guarantees and
because of change in market conditions and price
structures of the commodities they're dealing with, and
differing conditions within the country that they haven't
been able to maintain their commitments, and I think
that is a possible occurrence that might take place
here in the north as well.

THE COMMISSIONER: One point
it makes is though, that if the Government of Canada
guarantees a loan made to the pipeline group, and they
repay the loan on time and so on and so forth, then

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
Cross-Exam by Hollingworth

the Government of Canada won't ever be called upon to make good on its guarantee, and I really don't think there's much argument about that. In any event, it seems to me that may well be a matter for the National Energy Board.

MR. HOLLINGWORTH: Well, I wondered that, sir, but it is in his evidence.

THE COMMISSIONER: Yes, oh I know.

MR. HOLLINGWORTH: It seems rather argumentative, and my point is there's no expense whatever in a guarantee that's carried out on a project that's carried out, and I'm trying to get Mr. Draimin to agree with me.

THE COMMISSIONER: Well, whether he does or not, I don't think is going to make very much difference to me, with respect to Mr. Draimin, and the National Energy Board, it seems to me, will have to look at that and determine whether, providing a guarantee makes any difference on the National Government's own capacity to borrow on the market itself, which is something that we'll let them struggle with.

MR. HOLLINGWORTH: Well, I'm mindful of the jurisdiction, sir, but I'm also mindful of the coverage your proceedings get.

THE COMMISSIONER: Well, don't feel I'm cutting you off. I didn't think you were getting anywhere with Mr. Draimin.

A Maybe I should turn this over to Mr. Rolfe it would be better.

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
Cross-Exam by Hollingworth

WITNESS ROLFE: Well, as I

recall that study, which I did see a copy of, I think
Mr. Pratt's point was that even though if the project
is successfully completed there will be no cost to the
Federal Government, but nevertheless, the fact that the
Federal Government would enter into a completion guarantee
would give it in a sense a vested interest in the
completion of the project, so that operating under
high risk conditions it would definitely be in its
interest to support the project through to its completion
if it did run into problems, and that is the kind of
relationship I think he was pointing to.

THE COMMISSIONER: Well, you
say that the history of Canadian development on the
frontier has been one of both public and private parti-
cipation in terms of raising capital, and this indicates
that this project if it goes ahead will be in that
Canadian tradition. That seems to be what is being
said here.

A Yes.

21 MR. HOLLINGWORTH: Q So that
22 really you're directing your remarks to direct parti-
23 cipation by government using public funds rather than
24 a guarantee.

A Well, I guess what I'm
saying is that they're related in the sense that a
government that makes that guarantee could be in the
case, if a project did run into trouble, would be operat-
ing under a certain influence to provide financial
backing, etc., to participate in a more direct form

Rolle, Brownstone, Braimin,
Clarke, Menez, Smith
Cross-Exam by Hollingworth
Cross-Exam by Steeves

in order to avoid the collapse of the project.

Q So that's your interpretation of Professor Pratt's remarks?

A Yes, as I recall them.

MR. HOLLINGWORTH: I have no further questions, thank you.

MR. SCOTT: Mr. Steeves?

MR. STEEVES: I'm going ahead of Mr. Bayly.

MR. SCOTT: I'm sorry, Mr. Bayly's returned. I overlooked that.

MR. BAYLY: I have no questions, Mr. Commissioner. Go ahead, Mr. Steeves.

CROSS-EXAMINATION BY MR. STEEVES:

Q Mr. Brownstone, if I understand your evidence at page 3, you talk about a more equitable distribution of the -- I was trying to get the line number -- you talk about sharing on an equitable basis. Do you see that?

"The overall aim of development is to bring into being a society in which the available resources are shared by the people on an equitable basis."

Have you or your organization been involved in advising the Native Brotherhood about their claims and what claims they should formulate and place before the government?

WITNESS BROWNSTONE: No, we have

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
Cross-Exam by Steeves

1 not, your honor.

2 Q Now, what does that
3 statement represent, is it from the point of view of
4 Oxfam, or is it just your own point of view?

5 A It's the point of view
6 of Oxfam. This is a policy statement of the organiza-
7 tion.

8 Q It's a policy of Oxfam?
9 A It's a policy statement
10 of Oxfam-Canada.

11 Q Do you know anything
12 about the present organization and constitution of the
13 Government of the Northwest Territories?

14 A Yes, I know something of
15 it, your honor.

16 Q Do you know how the
17 council is made up, the Territorial Council? In terms
18 of its membership, I mean.

19 A How it's constituted?

20 Q Yes.

21 A Politically?

22 Q Yes.

23 A I'm afraid I can't comment
24 in any detail, your honor, no.

25 Q You can't what?

26 A I can't comment in any
27 detail.

28 Q Because you don't know?

29 A That's right. I'd like
30 to address that question to Mr. Rolfe. He has information.

Rolfe, Brownsome, Braimain,
Clarke, Menez, Smith
Cross-Exam by Steeves

Q I'm sorry, to who?

A Mr. Rolfe.

Q Oh, can you assist me on
that, Mr. Rolfe?

WITNESS ROLFE: Perhaps, I have
some knowledge of the structure of the Territorial Council.

Q Well, as I understand the position,
a majority of the members of the council are members of the
organizations represented by Mr. Bell, is that correct?

A I understand that the
majority of the council are native people, yes.

Q And isn't that situation
entirely different from every situation mentioned by
each witness on this panel? There's no such situation
in Brazil, is that not true?

A I'd have to check that
with other members of the panel.

WITNESS SMITH: There's no
direct parallel in terms of government structure. I
don't think there's any direct parallel in terms of
organization.

Q Well, is there an indirect
parallel? You're trying to make some kind of a parallel,
are you not?

A I think what we are
attempting to show is that the broad conditions of
development, taken in both areas -- socio-economic,
cultural and spiritual dimensions -- that native
peoples in the Amazon as well as in Canada do share
a common value system and that they have also suffered

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
Cross-Exam by Steeves

common problems, common effects of what is frequently called "development".

Q Well, are you saying that the degree of any to which native people participate in the political processes of the areas in which they are living is of no significance?

A No, I'm saying that that is of major significance, participation, and being aware of what is happening and having some decision, some input into the decision-making process I think is what we defend.

Q Well, how do you classify the participation of the native peoples of the Northwest Territories in the Territorial Government? Do you classify that as major?

A I think the native people themselves would have to answer that question.

MR. BELL: I think Father Menez wants to answer that.

MR. STEEVES: No, I'm going to ask this witness first of all. You don't know the answer to that?

A No, my answer to that is I feel that that is a question that the native peoples themselves should answer as to their participation.

Q I'm sorry, Father, could you contribute to that?

WITNESS MENEZ: First of all there is a general statement in the Territories and especially coming from the white people saying that

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
Cross-Exam by Steeves

1 the Territorial Council is a product of a colonial
2 state in the sense that the Territorial Council doesn't
3 have what we call the power of deciding. Just more or
4 less an Advisory Council. For me I think this is
5 a most important thing. The whole system -- Territorial
6 Council, local government, is based on a system that's
7 a flowing thing to what we call Indian culture, the
8 people's mentality, so it is almost impossible for them
9 to adapt to that system.

10 Q Are you talking about
11 the consensus idea amongst the native communities?

12 A Yes, because first of all
13 it's addressed in the language that's foreign to them
14 and the system opposed to them to govern themselves to
15 govern their country is foreign to their mentality,
16 and that's one of the reasons, I think, why one of the
17 councillors is resigning from the Territorial Council.

18 Q Are you involved in
19 education now?

20 A No sir. What do you
21 mean, schooling?

22 Q Yes.

23 A No.

24

25

26

27

28

Rolfe, Brownstone, Draimin
Clarke, Menez, Smith
Cross-Exam by Steeves

Q I'm sorry Father, what you have to say then applies equally to the non-native population of the Territories as to the so-called native populations. Is that right?

A What I have to say about?

Q About the political structure.

A Yes. About the only difference on the system is understood by the transient population, we call it sometimes the white people.

Q Yes.

A You know, they are no problem. They can understand it and criticize it. The native people ^{don't} know about talking about the whole.

Q I'm sorry, you say the native people don't have sufficient understanding of the political system to criticize it?

A Yes.

Q Is that your evidence?

A I say the majority of the native people, they cannot even criticize the system because they don't understand it and the word that we use is -- we don't know.

Q Could I return Mr. Brownstone to you and to page ten of your evidence, where you refer to the indigenous economies in the middle of the middle paragraph? Page ten. Have you found that sir?

WITNESS BROWNSTONE: Yes, I have.

Q I take it what you're talking about there is the apprehension that if development

Rolfe, Brownstone, Draimin
Clarke, Menez, Smith
Cross-Exam by Steeves

proceeds in the Territory, the present indigenous economy will suffer. Is that right?

A Present and historic, yes.

Q Right, well what's the present state of the indigenous economy of native people of the Territory? Do you know?

A Well, the present state of the indigenous economy is a very disturbed state.

Q It's what?

A Disturbed in terms of its historic character.

Q Yes.

A The argument we put here is that ^{this} kind of disturbance is in the name not of the benefit of the indigenous people, but the intervening dominant group. We're arguing here for a reversal of this kind of process and a building of an economy from indigenous values with indigenous structures and on the basis of self-determination of indigenous people.

Q You mean you're arguing for a going back to something that existed a long time ago?

A No, I'm not arguing for that at all. I'm arguing for using the cultural base which is still present in the Dene people, using this base as a platform -- as a starting point of a developing economy, not a retrogressive one.

Q At page 11 of your evidence you refer to the assistance you've been able to give the native groups through financial and other support. What sort of other support?

Rolfe, Brownstone, Draimin
Clarke, Menez, Smith
Cross-Exam by Steeves

A What is the precise reference in the brief?

Q The top of page 11.

A I'd say that our support consists in our educational program and a political action program.

Q I see, and does your political action program involve advising the Native Brotherhood?

A Not at all. Our political action program basically is -- has focused on the Federal Government and its policies and on the Canadian public generally, and our membership of course.

Q Sir, on page 15 of your evidence at the last paragraph -- and the last paragraph you speak about and I quote you:

"A land settlement that recognizes the aboriginal title of the Dene to their traditional lands, that invests them with the power to chart their own course for the future".

And so on. Do you have knowledge of the details of what you're talking about there so far as the claim of the Dene is concerned?

A Do I have knowledge of the details of the claim?

Q Yes.

A Put forth by the Dene?

Q Yes.

A Yes, I would think that the -- that knowledge isn't very extensive and needn't be.

Rolfe, Brownstone, Draimin
Clark, Menez, Smith
Cross-Exam by Steeves

The claim is simply for a reassertion of aboriginal title.

Q I see and what do understand is meant by "aboriginal title"?

A I assume that means ownership in the ordinary sense and the discretionary power that goes with it.

Q What is that discretionary power?

A It deals with the power to utilize resources within the confines of Canadian law.

Q And Canadian law, including the right of eminent domain or expropriation?

A Yes, of course.

Q Do any of you gentlemen on the panel disagree with that? Father, do you disagree with that?

WITNESS MENEZ: Disagree with what? Could you --

Q With what the witness just said.

A Yes, but what was the meaning exactly of the aboriginal rights?

Q Yes. Do you understand it to be subject to the laws of Canada?

A Well, I think it would be up to the native people to answer that question I suppose. If they want to look, to consider this land as their land 100 percent and get the full political power

Rolfe, Brownstone, Draimin
Clarke, Menez, Smith
Cross-Exam by Steeves

they want, well it's up to them.

THE COMMISSIONER: What Mr. Steeves is saying Father, is that let us suppose that the Government of Canada were to say to the Dene, "All right, we acknowledge that you have aboriginal title to the lands that you claim." Mr. Steeves is saying that the Government of Canada retains the power to expropriate any land that is needed for the construction of a pipeline. What he's saying is -- he says to you you don't take any exception to the laws of Canada applying to to the Dene in the same way as they would people in any other part of the country.

Maybe I'm not making this any clearer, but that's what I thought you were driving at.

MR. STEEVES: And I'm obliged to you, sir. You are, I think. Do you understand now Father?

A No, I'm not very fast, very quick this afternoon but one thing I understand that the land belongs to the people and that question should be asked of them. If there's a land claim and they say, I don't know how many thousand square miles, I'll go along with any decision that the Dene will take regarding their land.

Q Well you've lived with the Dene for a long time, haven't you?

A Yes.

Q You understand the way they feel about the land?

Rolfe, Brownstone, Draimin
Clarke, Menez, Smith
Cross-Exam by Steeves

A Yes.

Q Do they see that they --

I'm sorry, I didn't arrange that. Do the Dene people see that their relationship to the land is such that they have to have absolute sovereignty over it?

A The reason why I'm not so quick is because I've been so many years with the people. After two years in the north part, I would have got an answer that would have been square, you know.

Q Yes.

A Now, I think sir the mentality of the people the land is not something, it's somebody and ^{you} share with the people who want to share it with you and the ^{way} you want. It's a living person. You don't sell a person. You don't sell your mother. You don't martyr your mother but you -- I would say that you love more your mother when your mother loves other children that don't belong to the family.

You know, I'm approaching it with guts more than with brains, I would say in a sense and with no background of I would say, with not in mind of business, exploring and getting rich and so on, but sharing, respecting and I think that's the approach the people will have to, but because they have to address themselves to a society who's imbued with those definition like the square miles, exploring, building a road on something there to get those categories in their papers and they ask for so many square miles which is against their, you know, their way of thinking I would say. So perhaps it will show you the map of the

Rolfe, Brownstone, Draimin
Clarke, Menez Smith
Cross-Exam by Steeves

country of the north how it is utilized, used by the people and they will ask you nothing so they will be all right to say, "well, come and share with us the riches of this land of our mother which is the sun, the sky, the animals, the plants and let's live together in harmony with nature." I know it doesn't make any sense though to many people.

Q Well I'm not suggesting that at all.

A To us it does.

Q You know, I'm not suggesting that at all, but you can't answer my question about -- I'm sorry am I interrupting you?

A So with that approach, I don't see what the Canadian laws have to do, you know with what you are calling expropriation or something. It doesn't make sense.

Q Well do the Dene people, in their relationship with the land that you've described see it necessary to live outside of Canada in order to have that feeling towards their land?

A You don't have to --

Q Live outside of Canada?

A Yes.

Q Become a separate nation; is that what the Dene people are asking for?

A I don't know. You ask them. I'm not a Dene.

Q I'm sorry --

Rolfe, Brownstone, Draimin
Clarke, Menez, Smith
Cross-Exam by Steeves

A No, no, I'm not a Dene
so I cannot put, you know, answers in the mouths of
those people.

Q O.K.

A It's something that's --
you're asking for an answer and there is no answer tonight.
You know, it's what we call a dynamic process. You
discover it by living and I suppose many of the Dene
would be embarrassed to answer you exactly what a land
claim will be. I think sir it's a matter to sit
together on a table and start to explain point by point
you know. Like the Dene would say like in their
Declaration, that the land is our land and come to us
be
and share with us. That may be part of the approach. I
don't know. Then afterward, we'll talk about Canadian
laws, the game laws and things like that.

It's what we call a existentialist
approach and not a static approach I think to a problem.
It's life. It's not written in black and white. It's
not a book.

Q Well, I'm not quarreling
with that approach at all. No, I say that seriously.

A Yes. Yes.

Q Don't you agree with me
be
that there's got to be some practical mechanical ways
of achieving a just settlement for the Dene people?

Rolie, Brownstone, Draimin,
Clarke, Menez, Smith
Cross-Exam by STeeves
Cross-Exam by Scott
A Oh yes.

Q You've got to do more
than talk about emotional feelings, don't you?

A Yes.

Q And from your knowledge
of the Dene you can't tell me or make any suggestion
as to the practical aspects of the ownership of land
and the aboriginal rights. Is that the position?

A No.

Q Can you tell me anything
about the practicalities?

A No, it doesn't worry me
because it is not my problem in a sense. I
listen to the people. I don't ask to reveal what
people have been telling me not as a secret but more
or less like a friend, some way of thinking the problem
but nothing different. I don't have to expose that
in public. It would not do anything, I don't think,
for the problem we are dealing with, which is moral,
so you were asking a question about destroying the
economy of the natives, the natural economy of the
natives and that would be more perhaps to the point.

MR. STEEVES: Thank you very
much, Father.

CROSS-EXAMINATION BY MR. SCOTT:

Q Mr. Clarke, I have some
questions for you, please. On page 4 of your paper
you refer to the decline of populations in the Amazon
Basin between 1900 and 1940. What has the state of the

Rolle, Brownstone, Draimin,
Clarke, Menez, Smith
Cross-Exam by Scott

population been since that period up to the present?

WITNESS CLARKE Since 1940,
you mean, up until the present?

Q Yes.

A Well, again I think it would be useful here, sir, for a good answer to your question to refer to someone who's been in Brazil, who has an idea, you know, in watching that situation in the Amazon and so perhaps Father Smith, could you --

WITNESS SMITH: Well, the -- as the text points out, in the 1870s when the first recorded contact was made with native people in the Amazon there was a thriving community of various tribes. As you know, the Amazon Jungle cannot support large communities, so you find small tribes of perhaps 100 families and would find perhaps 17 to 18 villages that make up one ethnic group that recognizes themselves under a specific name or title, and the statistics are extremely difficult to come by but tribes that were the Villa Boas, Lobus Brothers and the Xingu Reserves knew of tribes and here again we talk of the oral tradition because these people do not have a written tradition. They speak of the time of their grandfather and their great grandfather, or they speak of the time of the empire, 1890s and refer to certain numbers of peoples in tribes at that particular period.

Q I perhaps haven't made myself clear, but I understand from the paper that it is estimated that in, let us say, the 16th century, the populations were somewhere between one and five

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
Cross-Exam by Scott

1 million and then the second-last sentence indicates
2 that as a result of atrocities and natural disasters,
3 by 1900 the population had been reduced to less than
4 a million, and that by 1940 the estimate was half a
5 million. What I'm really asking you is, I'm asking
6 to see if there's any parallel with what's happened
7 in the Northwest Territories is what do we know about
8 1950 or 1960 or 1970? What are the populations now in
9 the Amazon Basin?

10 A I don't have specific
11 statistics on that.

12 WITNESS DRAIMIN: There has
13 been a rapid decline in the number of native peoples
14 estimated to be in the Amazon Basin. I think according
15 to Brazil's leading authority on native peoples,
16 Professor Darcy Ribeiro , he calculated approxi-
17 mately five years ago, using the data that he had, that
18 given a present rate of the decimation of the native
19 people by the year 1980 there might not be any native
20 peoples left in Brazil. But that's just an estimate
21 and it's not clear exactly what numbers of native
22 people exactly exist. I think right now estimates
23 probably lie somewhere in the region between 50 and
24 100,000 native peoples in Brazil.

25 Q And those would be native
26 people who reside generally in the Amazon Basin?

27 A They're not all in the
28 Amazon Basin actually. Some of the more developed areas
29 in the south part of the country have their own Indian
Reservations as well, which they're not actually

Rolle, Brownstone, Draimin,
Clarke, Menez, Smith
Cross-Exam by Scott

1 specifically called part of the Amazon Basin, they're
2 on the periphery of that.

3 Q Well, I'm led to believe
4 that for better or for worse, many natives in the Amazon
5 Basin have migrated to the cities in Brazil.

6 A Well, I don't think
7 that's at all true. Some of them have. I think what
8 many of them have done that have survived thus far,
9 people that have actually just gone farther back from
10 the centre of the basin. Right now we have a situation
11 where the lattice work of roads that is developing all
12 over Brazil is just pushing the Indians farther back
13 into the jungle. The situation now in the territories
14 of the north-west of Brazil, for example, there are
15 native people tribes that live there that aren't
16 indigenous to that particular area, they've migrated
17 there because there hasn't been intrusion by the non-
18 Indian as of yet.

19 Q Well, perhaps then if
20 we took, would it be fair to say very very roughly that
21 it would be your guess that at, let us say, 1965 the
22 population would be, let us say, 100,000?

23 A 1965. You say 1965 or 1975?

24 Q Well, either one. What
25 I'm trying to get is do you think it's reasonable --

26 A I'm not sure.

27 Q -- no, the numbers game
28 has begun with this paragraph in which the declines in
29 population have been described. I'm interested in that
30 because that has not been paralleled in Canada, and I

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
Cross-Exam by Scott

1 want to know first of all, has that decline continued
2 and approximately to what point?

A The decline has continued
4 and I couldn't give you really accurate figures, but I
5 would say that presently it's between 50 to 100,000
6 native people in Brazil.

Q All right. Now what is
3 the -- what are the reasons for it, so far as they can
9 be judged, ^{for} that decline in population? Is it birth
10 rate or is it other factors?

A Oh, I think a large part
12 of it results from the imposition of foreign cultural
13 values, the imposition of moving Indians about, the
14 contraction of non-Indian diseases ^{because} of the intrusion
15 of white settlers in the area.

Q Well, if we could take
17 it step by step, I take it that what you're saying first
18 of all is that there have been the continued introduction
19 of diseases that have killed part of the population.

A That's correct.

Q What other factors are
there?

A Well, there's cultural
24 demoralization that's taken place in a large number of
25 places where the patterns of the Indians' livelihood
26 is disrupted because the environment has not been able
27 to support their lifestyle.

Q Well, how does that
reduce the population?

A Because the Indians are

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
Cross-Exam by Scott

1 dying of starvation. There is a higher rate of infant
2 mortality because mothers aren't able to give birth
3 to children because they are suffering from malnutrition
4 themselves. The high incidence of retardation as well.
5 There have been some cases where native peoples under
6 the impression that they have to flee from so many
7 different areas constantly, feel that they are in a
8 better position to flee if they don't have children,
9 so some women have gone so far as to aborting
10 their babies, under the impression that that would
11 give the tribe a better chance for survival.

12 Q Well, would it be
13 correct to say then that one of the principal causes
14 for the decline of the population has been poverty,
15 that is to say malnutrition and the inability to
16 control disease, to provide medical safeguards for
17 childbirth and so on?

18 A Well, you're sort of in
19 a vicious circle there. Where exactly does the circle
20 start and where does it begin? I mean, the final
21 diagnosis the coroner will give you the reason for
22 death might be disease or it might be malnutrition, but
23 that probably isn't the origin of the problem. I think
24 it would be a mistake just to look at the statistical sort
25 of data on what was the cause of death. The cause of death, its
26 repercussions are much wider than just that. We're
27 talking here about the whole pattern of livelihood of
28 the people -- that the people are trying to maintain
29 and its disruption. I think it would be unfair to
30 say that if you just put them in a hospital that would

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
Cross-Exam by Scott

1 prevent the people from dying because of access to
2 medical facilities or anything else. But I think in
3 terms of describing the deterioration of the native
4 people, that perhaps Father Smith would be in a better
5 position to do that to your satisfaction.

6 Q Before we pass on to
7 Father Smith, the reason -- I'm sorry.

8 THE COMMISSIONER: Mr. Bell
9 wants to get into this.

10 MR. BELL: I believe, Mr.
11 Scott made a statement that the decline in numbers of
12 native people had ^{not} occurred in Canada, and that's not
13 my understanding of what we heard in Father Fumoleau's
14 evidence.

15 MR. SCOTT: No, that isn't
16 what I said. What I said -- what I intended to say if
17 I didn't say it, is that a very drastic decline had
18 occurred in Canada and had been reversed and what I'm
19 looking for, and I think we know something in Canada
20 of why the reversal has occurred, and what I'm really
21 looking for is, if there hasn't been a reversal in
22 Brazil which would parallel the Canadian experience,
23 what the reasons for that are, because those reasons
24 no doubt will point out a different socio-economic
25 or cultural experience. Now did somebody else want
to add to the answer that has been given?

WITNESS SMITH: I think, sir,
we could agree that poverty is a cause and yet I think
we would have to see poverty as a provoked phenomenon,
and not simply an effect of a given environment, because

Rolle, Brownstone, Draimin,
Clarke, Menez, Smith
Cross-Exam by Scott

1 until 1964 the Amazon was indeed a very remote region.
2 It was accessible only by riverboat, and it's a long
3 river, 3,000 miles, with all kinds of tributaries, and
4 by small plane. Many of these native populations,
5 because they are so small numerically, because of the
6 jungle living conditions which can support only small
7 communities, their balance with the land, their balance
8 with nature and with animal life is extremely delicate.
9 In a community of 100 and 125 people who, I think
10 it's important again to recall of a normal tradition,
11 they are a people who have a global vision of history,
12 who have a global recall of events, they are people who
13 have been persecuted over a long period of history, and
14 recall that their grandfather, their great grandfather
15 was killed by people coming in who were not of the
16 tribe, who were non-Indian peoples. Since 1964 a large
17 number of roads have been built in the Amazon Basin,
18 and once again I think the parallel we have in the
19 Northwest Territories because native peoples in general
20 have a system of using the land base, which is communal,
21 they do not have a metric system, they do not have an
22 English system or a French system, the land is a living
23 being and therefore to cut off part of it, because in
24 a nomadic people you must move in order to hunt, there
25 are seasons where you must move in order to fish, and
26 if you have a road coming in with 100 and 125 men who
27 bring with them disease, who bring with them guns,
28 and who bring with them a new way of life that is
29 totally unintelligible, the only response then at times
30 one of
is violence, and violence generates the cycle of violence.

Rolfe, Brownstone, Braimin,
Clarke, Menez, Smith
Cross-Exam by Scott

In answer to this institutional-

ized violence which is the building of roads, which is
the taking of lands, which is the driving of people
from land without consultation, without understanding
who they are and what the land represents for them, then
in answer to this institutionalized violence there is
the violence of the oppressed people, the Indian who
only responds because he is peaceful, who only responds
in violence because he is the victim of violence. I
think we understand poverty as provoked phenomenon, but
it is not that diseases have suddenly increased. It is
because the contact with so-called industrialized
society has increased and that the Indian has been
totally marginal to this process that the dissemination
has gone on.

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Rolie, Brownstone, Draimin,
Clarke, Menez, Smith
Cross-Exam by Scott

1 Q Well, I suppose what
2 troubles me is the attempt to draw a parallel with the
3 experience in Brazil which has been very carefully
4 done in this paper with regard to who the developers are
5 and all the rest of it. And what rather troubles me
6 is this. Is it possible to draw the kind of parallel
7 you are attempting to do between the Brazilian Amazon
8 Basin people who were absolutely remote from contact
9 with the white man until let us say a decade ago, with
10 on the other hand, the people of the Mackenzie Valley,
11 who for better or for worse have had a longer experience
12 with the -- with development and the white man's work ?
13 Is that -- does that parallel really -- is that
14 parallel a realistic one?

15 WITNESS MENEZ: I think so.
16 It is only a parallel and you don't expect a parallel
17 to be exact of point for point. For example, you are
18 just showing up a parallel that's not proving anything
19 in a sense. I mean that's not for the good of the
20 people because of the decline of the native people in
21 the Northwest Territories stopped almost
22 in that -- at one point, in 1954, '55 and then it
23 went up after that but it is stayed equal for many years,
24 for about 150 years according to the studies that we have.

25 The other point you are
26 mentioning that the people of the north have been in
27 contact with the industrial world for so many years that
28 the impact is not so great but perhaps that impact has
29 been going on for more years here, you know, with the

Folte, Brownstone, Draimin,
Clarke, Menez, Smith
Cross-Exam by Scott

fur industry, the wage earning situation given to some place more than others and like a saw mill operation, fishing industry, transportation, the situation organization, what else we have? I know it's getting bigger and bigger all the time. So it has been more progressive so the impact was not so brutal perhaps than in Brazil.

Q Well, let's then take the parallel as we have it and see what we can -- I'm sorry, you wanted to make a comment?

WITNESS BROWNSTONE: I want to respond as well to the question. My position would be that the characteristics of development, Brazil and Canada are virtually identical. The consequences on native peoples in Brazil and Canada are somewhat different but I think only at the level of physical survival. I think it is quite easy to demonstrate that the physical decimation of the Amazon Indians will not likely be repeated in Canada, has not been repeated. But in every other criteria of development or human existence, I think the situations are quite identical. There hasn't been massive physical extermination although some episodes in Canada which I think qualify. There has been a physical violence perpetrated in Canada, not extermination but violence. Certainly there has been extermination of cultures, of social organizations, of political rights, not in formal terms, but in terms of a participative role in Canadian political society. All of these I think are predictably occurring, will predictably occur in the face of a

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
Cross-Exam by Scott

development of the sort that is now being contemplated for this valley. It certainly has occurred in other parts of Canada where industrialization has come in whether it be the forest industries in northern Manitoba or the similar industries in Alberta, mining industries. All of these things are, I think, at the level of, the social level, the political level, the economic level. The parallels are very striking between Canada and Brazil.

Q Well, I guess what I have been asking and perhaps you might have some comment on this is, is does the time frame over which these things have occurred and the time frame in which we find ourselves in Brazil, a decade after the first entry of the white man to the Amazon Basin, the Northwest Territories half a century after the entry of the white man in the fur trade, does that make a fundamental difference to the parallel?

A I would say it makes no difference at all in terms of the effective status of the native people as between these two places. Certainly, hypothetically, if you have a longer development process then you have a longer period in which to adapt, but the issue is whether there was any adaptation in either situation. And my answer would, I think, basically would be, no. That you haven't had in the face of 50 years of meeting of native people and non-native people in the Northwest Territories, an adaptive process which favours the status of the native people. There have been references here to participation

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
Cross-Exam by Scott

1 on the Territories Council which of course, perhaps I
2 shouldn't say, of course, is a democratic sham. That
3 participation on the Council does not give native people
4 an effective political base or effective political
5 power. It isn't even a reasonable transitional phase
6 towards this kind of process.

7 Q Well, then, if we begin
8 with the assumption that the parallels are useful and
9 provide an interesting comparison, let's go back to
10 Brazil just for a moment and if it should be -- if
11 it were determined that in a certain time frame,
12 development of the Amazon Basin was desirable, what
13 are the preconditions, if any, for that development? We
14 have been told that in the case of Brazil the horrible
15 things that have happened, what should the course have
16 been that would have avoided those consequences?
17 And relate that if you can to the other parallel that
18 you make, the Mackenzie Valley.

19 WITNESS CLARKE: Could I try
20 to start that then? I think the principal lesson that
21 comes out of the Amazon case study, while the
22 parallels in all cases are not perfect, the principal
23 lesson is the question of the relationship between
24 the people and land and their own economy and as we
25 were pointing out in the Amazon case study, you had a people
26 who had a self-sufficient economy and who could provide
27 for themselves on that land. With the introduction of
28 industrial development in the massive way that it
29 occurred and is occurring still in the Amazon, you have
30 people who press to move off that land and that land is

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
Cross-Exam by Scott

taken over and those resources are developed.

Now, it seems that the principal lesson that comes from all that is the question of what is, you know, in terms of the impact, is the impact upon the people losing control over their own way of life. Now, that's not only in terms of culture and socially but also economically because the examples we use, for example, when you take 10,000 people and put them in an area where only 300 could survive, you have got that situation of nonsurvival in terms of being able to feed themselves.

Q I drew that from your paper, Father, but what I am really asking is what would you have done.

A Well, just, can you wait?

Q Yes.

A Can you hold on a minute? I'm not a priest either.

Q I'm sorry. I think that's what you say.

A In terms of -- the principal lesson from all that is the whole question of control over their future economic development and the question of a settlement, a just settlement of land claims prior to any kind of industrial development and that is the conclusion that we reach in the study and it is the principal lesson that we have to draw from that.

You have the whole

Rolie, Brownstone, Draimin,
Clarke, Menez, Smith
Cross-Exam by Scott

1 situation that in order that a people can have a sense
2 of power and involvement in decision making regarding
3 their future, land is essential and their land rights
4 and a recognition and settlement of those land rights
5 in a just manner is an essential precondition to the
6 introduction of industrial development on that scale.
7

Q But to what purpose, what
follows from that? You know, let us assume the
Brazilian Government had said, "All right, we recognize
communal title in the people of the Amazon Basin in
their land." What follows from that?
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Rolle, Brownstone, Draimin,
Clarke, Menez, Smith
Cross-Exam by Scott

A Well then the native people holding title to that land would be in a position to negotiate with developers, etc., regarding the development of that land. But the point is they have -- they're in a bargaining position then to be able to make certain that that pattern of economic development is not a detriment to them as a people.

Q All right. Any other pre-condition for this kind of development that you want to add? Or anybody else, for that matter.

A Mr. Scott, is it?

Q Yes.

A May I just clarify my last point, just one step further? You know, it's the same situation in terms of a parallel as far as the Amazon region of Brazil is concerned. When you move in with that kind of industrial development and people are moved off their land and they can no longer maintain a self-sufficient economy, there's only two choices in effect: Either people are forced into a kind of wage economy, or welfarism is the other choice. I think what's really crucial here is that it's not just a question of a principle regarding a just settlement of land claims in terms of what we're talking about in the Northwest Territories, but that that is the essential ground, if you will, the essential condition for a people to be able to engage in developing their own economic programs for economic development, and before -- if we're really talking about an alternative, to the a real alternative, levels of wage economy on the one

Rolie, Brownstone, Draimin,
Clarke, Menez, Smith.
Cross-Exam by Scott

hand and a welfare society on the other, surely that, too, is a pre-condition before industrial development proceeds.

Q Well, let's carry on then with Brazil simply because it's a little more less explosive in this area than some other things. Let us assume the Brazilian Government recognized communal title and it was thought in the interests of other persons living in the country to proceed with development. I understand that it would probably take two or three generations to develop the kind of political organisms that you're talking about on the part of the native people in Brazil that would allow them to respond to that challenge.

A Well, I personally am not competent to make a judgment regarding the Amazon native people. However, I understand the nature of your question. Does anybody -- Bill, do you want to respond to that?

WITNESS SMITH: Oh, I think that in fact they have control of their land and they have then, they are in a position of equal in any bargaining that would go on. If it takes them 200 years to negotiate, that's their right, and I don't think it is up to the developer to say, "Well, now if you can fine, do this in two years, and if you can't we're coming anyway." Otherwise, where does the ownership of the land come , if I must adjust or integrate within a given time period?

Q Well, you see, that brings

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
Cross-Exam by Scott

us back to Mr. Steeves' question which, as I understood it, was really to say this to you. Nobody in Canada owns their land in the sense that they can prevent it from being given up. Everybody is subject to a determination by democratic government that the land should be taken if the project be as simple as a school, or a highway or a bridge, and in what sense are aboriginal people different in their position, vis a vis the government of all the people?

WITNESS CLARKE: Mr. Scott,

I think the kind of thing that your questions are leading towards is the whole question of time framework, and given that, we have to recognize something that is very difficult for us as white people to recognize, and that is the tremendous pressures that come to bear on a small group of people who have inhabited large areas of land for a long time. You know, the time sequence from one form of society to another and the radical changes that occur are difficult for us to comprehend. I think that the kind of position I know that the churches have been taking on this whole matter, and we're studying this thing fairly carefully, we think that a period of time is essential. In other words, a kind of a moratorium thing, on all major resource development to give sufficient time to work out some of these things, and not have to, for the Dene, for example, to be put in a position of being pressurized to come up with a land claims settlement within a few months that kind of thing is just too much for any people in that state of affairs/^{to have} face. Now the exact question

Role, Brownstone, Draimin,
Clarke, Menez, Smith
Cross-Exam by Scott

about time period, how long and all that sort of thing, I personally don't have an answer to; but I know a lot of people are thinking about this, and one of the most difficult problems we face is that as white people we can't really comprehend the consequences of what's really in process already.

Q Well now, one -- I'm sorry.

THE COMMISSIONER: The last sentence -- forgive me, Mr. Scott -- maybe there was a slipped by me, thought bedded within it that / but what did you say?

"We can't comprehend the consequences of the process once set in motion?"

Is that what you were getting at? I was with you to that point.

A Yes, I mean simply this, that the consequences, I mean there's already been a series of decisions regarding the Mackenzie Valley Pipeline in one way or another. Now what impact those decisions really have, we don't know; but I mean we can assume, I think, Mr. Commissioner, that there is a time frame work involved as far as the companies concerned. I mean this is the pattern of the way corporations are involved in major resource development projects.

Q They have a time frame, but every few months they come here and announce it's been put off for another year. I'm afraid it's Arctic Gas, too.

A The very existence of a possible time frame would have certain consequences

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
Cross-Exam by Scott

is what I was referring to.

THE COMMISSIONER: Yes.

MR. STEEVES: Could I ask a question of the same gentleman? As I understand, listening to all you gentlemen, there seems to be a recognition that some sort of industrialization was inevitable in the Amazon Valley and that some sort of industrialization is inevitable in the Mackenzie Valley. Am I wrong in my interpretation of what you said?

Rolfe, Brownstone, Draimin
Clarke, Menez, Smith
Cross-Exam by Scott

A That it was inevitable?

Q That the process that took place in the Amazon was inevitable and that the process of industrialization is inevitable in the Mackenzie Valley.

A No.

Q Oh, I see. Well, I'm sorry, I think this gentlemen on the extreme left said that the reason why there should be a land claim settlement first. Am I correct?

A Yes.

Q Is that so the native people of the Territory can have some control through bargaining, of the development of the land over which they exercise that control. Do you mean development in the sense of industrialization?

WITNESS SMITH: Well, I think development in the sense of any industrial activity that is going to have an impact that such activities have on peoples who have a very peculiar relationship to the earth that we industrialized peoples do not have and have extreme difficulty in comprehending. For example, the definition of genocide in the U.N. Charter is very broad to the point of saying that anything that is done to disrupt the way of life of a people can be considered as the destruction of a people.

I think the problem lies in that we have one set of values. We look at ownership. We look at development in one way. We are dealing with a people who have another set of values, another way of

Rolfe, Brownstone, Draimin
Clarke, Menez, Smith
Cross-Exam by Scott

looking at ownership and it's a question of communication. So any kind of activity that upsets radically and essentially the mental state, the spiritual state, the integrity of the people is, I feel, an act of violence, and that therefore we have to be cautious and we have to make the efforts necessary to understand insofar as we can and to foresee insofar as we can, what the implications of our activities are.

THE COMMISSIONER: Could I just ask you gentlemen something, ask you to comment? This is -- the Inquiry is naturally concerned, vitally concerned with the attitudes of the native people of the north, the Dene and the Inuit because this pipeline and energy corridor, if it were established, would have an impact on the Dene and the Inuit. So, the Inquiry has been to practically all of the native villages and settlements and the -- to find out from the people themselves what their attitudes may be.

Now, you have come here and have posed what I think you would characterize as a moral issue in urging the moratorium on any major development until the land claims of the native people have been settled and you say, I think this has emerged from your evidence that that is the essential foundation for enabling the native people to participate in the future development, whatever it may be, whatever form it may take here in the north.

Well, and you say that you are opposed to placing any time limit on the settlement of a land claim and the establishment of a means for the

Rolfe, Brownstone, Draimin
Clarke, Menez, Smith
Cross-Exam by Scott

native peoples to be able to assert their own legitimate interest in northern development. I hope I'm doing something like rough justice to the submission you've made. Well --

WITNESS CLARKE: Pardon me.

Q Excuse me.

A When I was speaking about that moratorium notion, I was referring to the fact that it was difficult to pinpoint a time framework.

Q Yes.

A As distinct from being -- or as somewhat different from saying "opposed to".

Q All right, but what you're saying is that morally, and I want to make sure I understand you; that you're saying that morally it would be wrong to proceed with the construction of a gas pipeline and then an oil pipeline to establish an energy corridor unless the land claims of the native people had first been settled and they had been given the means to assert their own legitimate interests in northern development. Not the interests that we decide they may be entitled to assert, but the interests that they themselves feel they ought to be able to assert in what goes on here in the north.

Well, I hope as I say I'm doing rough justice to your proposition and you're really saying to us that's a moral issue, as I understand your evidence.

Now that, it seems to me confronts the whole question what are the attitudes of people in

Rolfe, Brownstone, Draimin
Clark, Menez, Smith
Cross-Exam by Scott

southern Canada and the United States toward northern development? I say the United States because one of the proposals before us is to establish an energy corridor for the transportation of Alaskan gas and oil to markets in the United States.

Now, that means that -- does it mean, let me ask you this, does it mean that the attitudes of people in southern Canada toward northern development have to be examined? Suppose that the Government of Canada were to adopt your position and were to say to southern Canada and it may be to the United States as well, if it were to come to that, "All right, we've decided to do the right thing by the native people of the north and that means that you may not have access to northern gas and oil, or as we say in the Inquiry, hydrocarbons, attempting to establish a veneer of authority in our discussions of these things. Now, suppose the Government of Canada were to say to people in southern Canada, "You may not have access to northern gas and oil until we have done the right thing by the native people of the north".

That might very well mean, we are told and Mr. Steeve's clients I think would take this position that we may see some running down of the industrial machine in southern Canada and maybe in the United States as well. We may have to^{do} with just one automobile instead of two, those families that have two, we may have to make some changes in the way we live.

Now that -- what you're saying if

Rolfe, Brownstone, Draimin
Clarke, Menez, Smith
Cross-Exam by Scott

you examine the consequences of it, entails a re-examination, it may be, by people in southern Canada and the United States of their attitudes toward the way they themselves live. It seems to me that if you take the consequences of your submission, to their logical conclusion, that's what you're saying and I just want to know if that is in fact what you are saying to us?

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
Cross-Exam by Scott

A Perhaps I could begin.

I take it that's a question to the whole panel, Mr. Commissioner.

Q Yes, I am asking you to comment and if you -- take your time. I gather that -- Mr. Bell, that through problems of logistics that we do have the rest of the afternoon at the very least.

MR. BELL: Yes, sir.

A Perhaps I could begin my comments, Mr. Commissioner, by revealing a little bit about some of the conversations I have had with southern Canadians and the work that we have been doing in the south in the last number of months. To do so, I think it would be worthwhile pointing out that there are a number of questions being raised by southern Canadians as well.

There is a question too, of whether or not southern Canadians really have control over their life, their future. And I cite the example of the '73, 1973 Policy Report of the Department of Energy Mines, and Resources which stated that in the last 25 years our energy consumption in the south has multiplied three times over and it will multiply four times over in the next 25 years. Well, when you pose that to a number of, you know, thoughtful people in the south, they begin to ask the question, "Well, who makes those decisions? Who decides that for us? Why should our energy consumption multiply four times over in the next 25 years?" What I am saying is simply this, that I think that there are people in the south who are

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
Cross-Exam by Scott

beginning to question whether or not they too have lost control over their future in terms of this question of energy and energy rates.

Now, with respect to energy --

THE COMMISSIONER:

Q May I interrupt you for a moment and then you feel free to take your time, but let me just put it this way. It seems to me that most people who live in southern Canada who are consumers of energy would regard their own uses of energy as conscious decisions they have taken for themselves, and that is that the purchase of an automobile and then another one, the purchase of a television set, the purchase of a large home or the rental of a large home which uses, which requires a lot of heat. That it may be that the people that you have been talking to have made it -- it is important to them to re-examine how all of this came about. But to most people, I should think in southern Canada, they have adopted a lifestyle consciously and deliberately and they regard it as something that they have sought throughout their lives to attain. I want to make it -- I want to put it in this way. Are you saying to them, if you are being perfectly honest about the consequences of the policy you urge, you may not be able to continue to enjoy that lifestyle which you have throughout your working life time devoted your best efforts to achieving. You are asking people, it seems to me, you may be asking them to sacrifice something that they have regarded as

Rolle, Brownstone, Draimin,
Clarke, Menez, Smith
Cross-Exam by Scott

1 important to themselves and with a notion of success
2 in life to attain.

3 Now, I understand the
4 point you are about to make and feel free to pursue it,
5 but I think you should still meet the notion I have just
6 put to you.

7 WITNESS BROWNSTONE: Your
8 honor, with respect, may I? I think your statement
9 assumes that we, up here, are somehow abstractions of
10 reality in the south, that we are sort of above it; we
11 are theorizing about reality in the south or projecting
12 it or somehow. I would like to correct that --

13 THE COMMISSIONER: No, I
14 didn't just mean --

15 A -- if it indeed dwells
16 in your mind. I think we have responded as people living
17 in southern Canada to what we have been hearing and
18 listening to it in southern society -- that's a very
19 bad phrase. And the statement Tony was making about the
20 move towards questioning energy consumption, towards
21 a conservative society, towards oh, discussions of
22 no growth or limited growth, on very many grounds, not
23 strictly in terms of the Mackenzie Valley problem but
24 for other reasons. The reaction against consumerism,
25 the whole discussion of where the so-called needs
26 and consumption patterns arise, whether it is based on
27 people's own preferences or something which is induced.
28 These are major issues, I feel, that have arisen in
29 terms of the Canadian culture, Canadian context and are
30 international in scope. So I think one of the first

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
Cross-Exam by Scott

1 points I would want to make in responding is that these
2 are -- some of these values have been developing and are
3 very prominent and significant in Canadian society
4 generally.
5

6 Q Mr. Brownstone, I agree
7 that those are absolutely vital questions and that
8 many other people in Canada besides the members of this
9 panel are concerned about them. I'm not unaware of that,
10 but anyway carry on. I'm sorry.

11 WITNESS CLARKE: I think at
12 the same time, Mr. Commissioner, there is a growing
13 scepticism about the question of, is there an energy
14 crisis or isn't there? And I don't want to, at all,
15 you know, give a dramatic position on that whole question
16 at this point but there is a lot of scepticism when
17 for example three or four years ago, we were told by
18 the energy industry that we had 923 years left of oil
19 reserves and 392 years left of gas reserves and then
20 of course, in the last couple of years, we have seen
21 a complete face about in terms of those particular
22 estimates.

23 You pose that to Canadians
24 as you cross the country, as I have been, at least in
25 the western provinces, in the last few months and people
26 are darn upset about those kinds of things. The question
27 is, "Who does determine? And what/~~access~~ to facts and
28 access to information regarding energy supplies in this
29 country seems to be so much in the hands of the energy
30 industry that it makes it very difficult to get a true
independent kind of position as to what the state of

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
Cross-Exam by Scott

affairs is regarding the energy situation in this country.
As you know, those particular facts in the -- were provided to the government in '72 and '73 by the Canadian Petroleum Association.

Q Well, we've -- that's come up here and --

A Right.

Q I have even taken the liberty of commenting upon it myself, so we know about it.

A Right. But the point is when you -- when citizens began to -- begin to examine those kinds of things then they begin to ask a lot of questions about the structure of our whole energy industry and policy in this country.

Now, whether, how widespread that is, I'm not prepared -- I'm not able to give an accurate comment on but the point is I think that those kind of questions are being raised and I think a lot more is going to be said about that.

MR. SCOTT: Isn't there perhaps another sacrifice that may be required in the event of a moratorium, Mr. Clarke, that you have been talking about? The services in the Northwest Territories, some of which are utilized by whites and some of which are utilized by natives and some of which are used by both, are substantially supported by tax dollars from southern Canada. Isn't there a risk that or isn't it right that into this equation, you have to put the proposition that southern Canadians may in the event of

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
Cross-Exam by Scott

a moratorium, not feel the same kind of dollar obligation as they felt or have been induced to feel with respect to supporting services in the north. Now, there may be nothing wrong with that. Maybe you'll get rid up here of some services that people don't want anyway but on the other hand, it seems to me that there is that possibility. What do you say about that?

WITNESS DRAIMIN: I was just going to say to reverse the situation, there is a tremendous amount of wealth right now which is being drained out of the Northwest Territories. I'm not exactly sure of the specific statistics on the amount of profit that Cominco makes out of the Pine Point mine, but I understand it to be quite substantial. That is only one of a number of mines that are now in production and there's other ones that they want to open up.

So, I mean, if you want to talk about the transfer of wealth, I think that most people would have to agree that there's more wealth leaving the Northwest Territories than there is coming in.

Q Well, you see, if you take me, and I'll only pursue this for one moment longer, but if you take me as your typical southern Canadian, my moral obligation to support the less successful economically in the Maritimes or in the Northwest Territories is (a) I hope moral but (b) is also dictated by the flow contra, whether it be of natural resources or as the Maritimers always say, having no

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
Cross-Exam by Scott

1 natural resources, brains. What really troubles me
2 is that if there were a moratorium in which basically
3 the people of the north said to the people of the
4 south, "You are not going to get it anymore for 10 or
5 15 years," that might have severe or have radical
6 implications for the north. They might be good or bad,
7 but isn't that something that has to be put in the
8 equation as well?

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Rolie, Brownstone, Draimin,
Clarke, Menez, Smith
Cross-Exam by Scott

A I'm sure it has to be put in as an equation if that's the attitude of southern Canadians, if they're going to cut the tap off, because they feel affronted, I guess, in one sense that's their prerogative, but then you're saying that's the prerogative of the native peoples as well, to do the same, and I think in that sense when we're talking about here a situation of the native people wanting to protect their own culture and developing their culture, that they would take advantage of what they have here to develop themselves so maybe they wouldn't need any more handouts from the Federal Government. If for example, the Brotherhood of the Northwest Territories owned Pine Point Mine, it would be -- it seems to me a hell of a lot better off financially at least than it would if it didn't have control over that mine. I think there's possibilities there and I don't see it as a black and white situation in terms of if things are turned off, and that's the biggest problem that the people face. That isn't.

Q Well, let's just follow that one up by asking Father Menez, Father, you live fairly close to it, what is the impact, for example, of the Pine Point Mine on the people where you live, in light of this general discussion about development, of which Pine Point Mine is I presume in your area a significant current example?

WITNESS MENEZ: Well, as I said, in a report like that you want to be honest with the author of the paper and recognize it cannot be

Rolle, Brownstone, Draimin,
Clarke, Menez, Smith
Cross-Exam by Scott

exact point by point, but when I was listening to it
it seems to me you would change your course by your
resolution and you know, FUNAI by Indian Affairs.
You know the report would have been very much adapted
-- very much a true for Fort Resolution. We got the
resources, people knew about the lead and zinc, they
use the lead for sinking their nets in water. It was
known since the people were there, and Cominco
moved in, let's say '65, '64, '63, and no, they didn't
push the Indians on a reserve, but they ignored them. People
were living there, that was their farm. They didn't
have a patch of potatoes but they were raising what
we call more or less fur, and there was a livelihood.
They didn't have cattle but they had animals to look
after properly, and Cominco moved in and they ignored
them completely. There was no compensation, and this
with the complicity of the government, ^{FUNAI --} I mean Indian Affairs,
and you know, had my eye, I was there in '49 to '53 and
you could see that coming, you know, prospectors. We
had them coming from all over, from the top, from the
bottom, and from underground, and to a point there was
a chapter added to the Eskimo and Indian legends, strange
people living in the background, you know, those pros-
pectors or those guys ^{working} = around, and they don't
consult with the people, they ignored them completely.
They would walk on their dead body, and that's it.
Those people have been moved out of there. That was
their reserve, their farm. I could give you the name,
Fabian, five of them, Lafferty, Bossley . I went
over with a guy before living to be sure, Modest, Henri
and so on.

Rolie, Brownstone, Draimin,
Clarke, Menez, Smith
Cross-Exam by Scott

Altogether we counted about 12 families, about one hundred people making a living.

There's another aspect we forget about, the other, Pine Point is a town of 2,000 people or so, and they need on weekends what they call recreation facilities, and they have a tendency to consider any stream, any tree, any prairie, any body of water, any fish, as recreation activities when for the people they say livelihood, it's just like the Indians going south and saying, "Oh, there's a patch of potatoes, a nice place to pitch out your tent and have the kids to play on," or go out yourself in the wheat. Recreation facilities, offered by white people, that's nice. It's the same, you see.

I'm not blaming anybody, I don't know if there are any Pine Point/ We are raised like that. The game law, game, it's a sport, you need rules for that.
/Does that answer your question?

Q Well, it's a start.

A It's a start.

WITNESS BROWNSTONE: Your honor, I wonder if I could respond?

THE COMMISSIONER: Yes sir.

A To that question, I believe the question was in terms of the service benefits of development to northern communities. I don't live in the north. I took a drive around Yellowknife yesterday and looked at sort of the distributive consequences of development and investment and services in the community, and the native people's

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
Cross-Exam by Scott

community was not at all a beneficiary of whatever improvements have been made in infrastructure in the Town of Yellowknife, the City of Yellowknife. Just on visual inspection, and this repeats itself in development site after development site, and it's not restricted to native people but it is more striking in the case of native people. The consequences of this, which may not have been observed in Yellowknife as yet, can be observed in a community like Regina, Saskatchewan, in which the apart from morals is entirely the community at large, the dominant community, suddenly feels it is being overwhelmed by the so-called Indian problem, which is a function, I think, of the maldistribution of development benefits, so-called.

So I wouldn't argue the case on moral grounds. I certainly wouldn't attempt to project the typical development pattern, some of which provides service benefits to those who are worst off in our society. The reverse is true, in community after community across Canada.

MR. STEEVES: Could I ask you, sir, as I understand what you've just said, what you see as the injustice is the fact that the indigenous people of the north will not share in the benefits of development. Am I interpreting you incorrectly?

A That's part of what I'm saying, yes.

Q So in that sense then you see development of the natural resources of the north as an inevitable process in history or economics,

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith
Cross-Exam by Scott

1 do you?

2 A I do not.

3 MR. STEEVES: I see. All right.

4 WITNESS MENEZ: May I answer
5 that? Development, it depends what you put behind.
6 If you take an example, in Fort Resolution we have
7 what we call a Developer Committee and they decided
8 if they want to make a go with a sawmill in Fort
9 Resolution they have to produce 15 million board feet
10 a year, and then you make a profit, you make money,
11 you become rich, you'll be able to improve the saw.
12 Now we are a sawmill that is based not on profit but
13 something to keep the people, let's say, occupied,
14 and make a living. They're not becoming rich. The
15 maximum is three million board feet, which means that
16 we have that communal industry going on for years and
17 years. 15 million cubic board feet a year means you
18 close the mill after five years of operation, or ten
19 at the maximum, and that's what they did on Fort
20 Chippewyn, was the same guy that came on. You see
21 that type of development approach --

22 Q There are two different
23 kinds of development.

24 A Oh yes. Perhaps you
25 could explain what you call by "development". You are
26 questioning my point of view, so I question yours.

27 Q O.K., that's fair
28 enough.

29 A But I'm sorry, Mr.
30 Berger, I'm not here to ask a question.

Rolle, Brownstone, Draimin,
Clarke, Menez, Smith
Cross-Exam by Scott

MR. STEEVES: That's why
lawyers don't like this place. You are here to ask
questions.

MR. SCOTT: The point you make
with that example is that a development at Fort Resolu-
tion that met what you perceived to be the standards of
the southern industrial mentality ^{would} remove 50 million
board feet in three years and then there would be no
need for a mill.

A Yes , no trees left.

Q No trees left?

A Yes.

Q And therefore a more
equitable local industry is one which paces that out.

A Certainly, and this is
possible only if there is nobody at the end of the year
to collect all the money, the profit, but leave it there.

Q All right. Well, one other
question, Mr. Clarke, in the back of your paper in the
studies there are two documents referred to that I
don't think I'm going to be able to get a copy of
without your help. The first is the document by the
bishops and priests of the Brazilian Amazon Y Juca Pirama
I think that's how that's pronounced perhaps -- and
another bishops' document on the marginalization of
people, and I wonder if at a convenient time you could
provide me with a translated copy of both documents?
I presume you must have had one yourself.

Smith, Menez, Clarke
Draimin, Brownstone, Rolfe
Cross-Exam by Scott

WITNESS CLARKE: Oh yes, yes,
most certainly.

MR. SCOTT: I'd appreciate it
if you could mail that to me.

A We have one of the
documents with us here and we'll mail the other one.

MR. SCOTT: Thank you very
much, those are the questions I have.

THE COMMISSIONER: Yes, Mr.
Rolfe?

WITNESS ROLFE: I just wanted
to pick up on one point by you Mr. Commissioner about
the status of southern Canadian opinion. I've had some
experience in trying to raise the issues involved before
this Inquiry with southern Canadians in the Province of
Ontario and I would just reinforce what some other
panelists have said that the southern Canadian opinion
is not uniformly, by no means uniformly behind a rapid
thrust in northern development for the sake of their
own material benefit or whatever material amelioration
it might bring to their lives but I think one of the
most amazing things is that the whole question of what
the opinion of what southern Canadians is is not clear.
It's something invoked by many of the interested parties
usually in favor of their own arguments, but there has
been no real process I think to encourage popular
participation amongst southern Canadian. I don't
think that public Inquiries alone like this Inquiry
or like the National Energy Inquiry are sufficient to
generate that kind of participation and yet a number of

Smith, Menez, Clarke
Draimin, Brownstone, Rolfe

the plans or a lot of the planning for northern development for things like pipeline and highways have gone on without that kind of process of participation, that process of hearing from southern Canadians taking place so that you have a situation where in fact we don't really know what the masses in southern Canada feel on those issues and I think that some responsibility for that must fall on the shoulders of the governments and corporations involved and I think it should be something that certainly is encouraged much more than it has been in the past and something which should be taken into consideration before decisions are made and I find it literally amazing that the degree of planning for northern development and the implementation of those plans should take place without that kind of involvement of southern Canadians.

Q Yes, Dr. Clarke?

WITNESS CLARKE: Just to add to that, Mr. Commissioner, I think that one of the things we're finding increasingly is that many southern Canadians simply are not aware of all of the factors that are involved, I mean the basic factors involved as they affect their lives and it's shocking for example when you, as we read it two or three months ago as reported to the effect I think 15 to 17 trillion cubic feet of the delta gas will be -- is already committed to export to the United States and then you get the advertisements on television screen and so forth, saying we must rush to the north and develop those resources or things to that effect. I think we're seeing

Smith, Menez, Clarke
Draimin, Brownstone, Rolfe

more and more people beginning to question this and certainly it should not be assumed by any stretch of the imagination that the national interest and what is the national interest is clearly understood and agreed to amongst southern Canadians.

Secondly, it should not be assumed by anybody, I don't think that the question of the development of energy resources in the north is only a question for, you know, is only a struggle that the native people are opposed to or involved in because it's a struggle that's becoming more and more clear to people elsewhere in this country.

Finally, I think some people are making the connection between some of their own understanding of what kind of pattern of resource development has occurred in their own provinces and regions which are not you know, unmatchable or unrelated to the kinds of things that are happening in the north. So, these are just some observations that we've picked up by conversations with Canadians in the south.

THE COMMISSIONER: Well, to bear in mind that this Inquiry has heard from a great many white northerners and many of the white people who live here in the north have expressed the same concerns that you members of this panel have expressed. Practically, I suppose practically all of the priests and ministers who live in the villages among the native people have talked in something of the same vein as Father Menez has, and other white people have said that

Smith, Menez, Clarke
Draimin, Brownstone, Rolfe

industrialization of the north is inevitable and the important things is that northerns should participate, white and native should participate in time honored ways but maybe just before we excuse you, we could return for a moment to the question that I've put to you which no one has sought to answer plainly.

You see, Arctic Gas says that the delivery of gas from the Arctic to the mid-continent is essential in order to avoid developing an unhealthy state of affairs regarding the balance of payments and so forth and so on, based on the continuing and increasing importation of foreign oil, if that's the right way to characterize oil and gas; foreign energy.

Now without arguing about the question whether they're right or wrong which is not something that this tribunal, this Inquiry is going to be in a position to decide in any event, are you saying to people in southern Canada it may be necessary in order to do what is right by the people of the north for you to curtail your standard of living, for the gross national product to contract instead of to expand, for southerners to make sacrifices and what they will regard as sacrifices. Is that the position that you are prepared to take a stand on if it comes to that?

That's -- maybe I'm particularly dense, but it seemed to me that you didn't altogether come clean on that.

WITNESS CLARKE:

A Are you addressing the question to me?

Q Well, anyone who wants to

Smith, Menez, Clarke
Draimin, Brownstone, Rolfe

A Do you want to start, and
then I'll follow?

Q Bear in mind, I appreciate
it very much the things you've had to say and they've
been helpful to me and it's --

WITNESS MENEZ: I'm not now
living in south so it's very difficult to impose
my own choice, but I'll say of course, you know, because
I'm afraid that more you find, more you'll, I think it's
been the past the way of doing, the more you find things
the more you have to find way to spend it so the first
thing to do is restriction because it doesn't -- if we're
going to adopt that attitude of restriction right now,
the world is going to be found in the Arctic I suppose
line sending it outside,
there's a pipe/ is not going to keep up with the supply
we need now but for the new ways invented in order to
spend as fast as we can or sell as fast as we can, that
oil coming from the Arctic that I think has been
the tradition of the industrial world to produce and
consume and produce and consume and restriction.

If I was a priest outside
I would say it's a mortal sin to consume too much.
Restriction would be a virtue.

Q Sorry, Mr. Brownstone
or Dr. Clarke?

WITNESS BROWNSTONE: Well, first
I would resist the notion of we are telling the southern
people to they must make this or that sacrifice. I
think we are part of a group which I can't define
numerically of a substantial intellectual group in the

Smith, Menez, Clarke
Draimin, Brownstone, Rolfe

south which is prepared to make that statement for itself and to extend it to the rest of Canadian society.

I think part of the problem is one exposure, to give people a meaningful choice, they obviously have to understand all the implication for themselves and for Canadian society as a whole.

I think the kind of process you're engaged in and we've engaged in in Oxfam for a long time now in our educational process is a means of really presenting reality to people in the south in a way which has been avoided by the way our structure and our social relations have operated. So, in a sense, we're engaged in a process not of telling people, but of exposing in a much more honest and open way the implications for all Canadians for this kind of development process.

My position will remain in front of this Inquiry that I'm not as pessimistic I don't think as others in terms of where peoples heads are at in the south. I think an enormous shift has taken place in the perception of people about the environment, about minorities, about poverty and other areas which doesn't make it a job of selling or convincing people or to engage in a sort of quasi-missionary action.

Our short-term experience with the Mackenzie Valley situation in the south has produced a very positive response based almost entirely on exposure of what is happening here and its likely consequences as we've heard and on people turning around and examining their own situation in the light of this

Smith, menez, Clarke,
Draimin, Brownstone, Rolfe

sort of exposure.

I'm not denying for a moment that there are value positions, positions of doctrine in our society that are extremely powerful and significant. Slogans like balance of payment, national sovereignty, the sanctity of economic growth and so on pervade a lot of our perceptions and these mask any attempt to really get at the reality of development. So, I'm not minimizing that kind of problem. What I'm saying is that in terms of our own experience and I hope in terms of the experience of this Commission that exposure, discussion, open discussion is going to produce a somewhat different mentality with regard to development in the Mackenzie Valley and development in the south.

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith

1 WITNESS CLARKE: I did not
2 mean that either to avoid the question because I think
3 it's certainly been one that's been at the center of
4 much of our work. I mean looking at those kind
5 of concerns, but I think what we were trying to say is
6 that a curbing of lifestyle is only one part of the
7 picture but there has to be a fundamental reorganization
8 of our economic and social structures to deal with
9 the questions that we're really facing here, because
10 it's just not enough to cut back on individual consump-
11 tion. There's more to it than that that's at the center
12 of industrial system that places demands upon those
13 energy resources and in that context, I would like to
14 just quote if I could the paragraph³² of the Bishop's
15 Labour Day message. I don't normally like to quote
16 these things but this is going all across the country
17 through audio-visuals, so people are hearing this and
18 picking this up so, you know, it's getting out beyond
19 the piece of paper into the -- in the form of an
20 educational program.

21 "In the final analysis, what is required is
22 nothing less than fundamental social change.
23 Until we, as a society, begin to change our
24 own lifestyles based on wealth and comfort;
25 until we begin to change the profit-oriented
26 priorities of our industrial system, we will
27 continue placing exorbitant demands on the
28 limited supplies of energy in the north and
29 end up exploiting the people of the north
30 in order to get those resources."

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith

Now, that's the conclusion
that we reach in that document which was based upon the
question of justice and the question of responsible
stewardship of resources.

WITNESS DRAIMIN: I just
wanted to make one statement which was that I don't think
that the choices that you are outlining are choices
that just have to deal with Mackenzie Valley. And the
situation of Mackenzie Valley might put Canadians in
a position of coming to grips with social reality,
the political economic reality of this country to make
some of those decisions sooner than they might have.
But they deal more broadly with what's happening
throughout the world.

We just talked about
Brazil, for example, and the situation of exploitation
of the mineral resources of that country whereas if there
was a similar situation that would happen in Brazil, it
would not just affect the citizenry of Brazil but also
all the consuming nations that are, at this point, getting
the benefits of the extraction of those raw materials.

I think that it would
be a mistake then just to isolate the situation and
put it in a context solely of that of the Mackenzie
Valley and I think that there's a whole moral and
social economic kinds of questions that Canadians have
to ask themselves of this society in what direction
that they want to turn. And if in making those choices
inappropriately, they don't do justice to the situation of the
Dene people. That's only one of the particular

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith

1 kinds of consequences of the choices that they have to
2 make and I think that the story of these kinds of
3 choices and the kind of social change that we might
4 want in this country cannot just be limited to that and
5 I think it's broader questions and -- but I do think
6 that on one hand, that this has offered Canadians one
7 form of -- one situation which to broach those kinds
8 of questions in a meaningful way and I look forward
9 to the trip that you do make to the south that people
10 might have an opportunity to do that.

11 THE COMMISSIONER: Well, any
12 further questions? Before we adjourn, let me just
13 say that Mr. Hollingworth raised the question with the
14 panel of the possibility of a guarantee being extended
15 by the government of Canada to cover any borrowings that
16 Arctic Gas or Foothills might make depending on which
17 one were to build this pipeline if indeed it were to
18 be built. It occurred to me that counsel may want to
19 consider and certainly, I don't want you to say anything
20 about it now but you may want to consider when we come
21 to the final submissions and your arguing about terms
22 and conditions that might be imposed if a pipeline were
23 to be built, on the whole question of the bearing that
24 a guarantee would have on the enforcement of those
25 terms and conditions; that is, whether there ought to
26 be some means of enforcing those terms and conditions
27 that would ensure that any federal agency charged with
28 that responsibility would be free to do so, notwithstanding
29 any federal liability that might be incurred under a
30 guarantee of the borrowings if the construction schedule

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith

were to be held up in order to achieve appropriate enforcement of social and environmental safeguards.

At any rate, it is something that counsel may want to consider and when we get to final submissions, say something about and I thought I would mention it now before it slipped from my mind.

Well, what do you propose for tomorrow?

MR. BELL: I would suggest tomorrow, sir -- I have mentioned this to Mr. Scott but not to any of the other counsel that we not sit tomorrow morning, that I assemble my witnesses tomorrow afternoon and we sit in the afternoon and the evening tomorrow.

THE COMMISSIONER: Well, one o'clock tomorrow then.

MR. BELL: Yes.

THE COMMISSIONER: Should I excuse this panel?

MR. BELL: Yes, I have no re-direct.

THE COMMISSIONER: Pardon me?

MR. BELL: I have no further questions of them.

THE COMMISSIONER: All right. Well, thank you very much Father Smith and Father Menez and Dr. Clarke and Mr. Draimin and Mr. Brownstone and Mr. Rolfe. I think we have all gained from your presence here today and certainly speaking for myself, I

Rolfe, Brownstone, Draimin,
Clarke, Menez, Smith

1 appreciate very much your observations and your
2 willingness to discuss these things in an informal
3 way with counsel and with me.

4 So thank you very
5 much for your attendance and perhaps we will see you
6 again.

7 (WITNESSES ASIDE)

8 THE COMMISSIONER: Well, we'll
9 adjourn till 1:00 tomorrow.

10 (PROCEEDINGS ADJOURNED TO APRIL 27, 1976)

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347
M835
Vol. 145

AUTHOR Mackenzie Valley pipeline inquiry:

| TITLE | DATE DUE | BORROWER'S NAME |
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| Vol. 145 | April 26, 1976 | |
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347
M835
Vol. 145

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